



**TUALATIN CITY COUNCIL
AND
TUALATIN DEVELOPMENT COMMISSION**
Monday, August 11, 2008

City Council Chambers
18880 SW Martinazzi Avenue, Tualatin, Oregon

~~WORK SESSION~~ begins at 5:00 p.m. NOT HELD

REGULAR MEETING begins at 7:00 p.m.

Mayor Lou Ogden

**Council President Ed Truax
Councilor Chris Barhyte
Councilor Monique Beikman**

**Councilor Bob Boryska
Councilor Jay Harris
Councilor Donna Maddux**

WELCOME! By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified a time for citizen comments on its agenda – Item C, following Presentations, at which time citizens may address the Council concerning any item not on the agenda, with each speaker limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are available for review on the world wide web at www.ci.tualatin.or.us, at the Library located at 18878 SW Martinazzi Avenue, and are also on file in the Office of the City Manager for public inspection. Any person who has any question concerning any agenda item may call Administration at 503.691.3011 to make an inquiry concerning the nature of the item described on the agenda.

In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, you should contact Administration at 503.691.3011 (voice) or 503.692.0574 (TDD). Notification thirty-six (36) hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Council meetings are televised “live” on the day of the meeting on Washington County Cable Access Channel 28. The replay schedule for Council meetings can be found at www.tvctv.org.

Your City government welcomes your interest and hopes you will attend the City of Tualatin City Council meetings often.

- SEE ATTACHED AGENDA -

PROCESS FOR LEGISLATIVE PUBLIC HEARINGS

A “legislative” public hearing is typically held on matters which affect the general welfare of the entire City rather than a specific piece of property.

1. The Mayor opens the public hearing and identifies the subject.
2. A staff member presents the staff report.
3. Public testimony is taken.
4. The Council then asks questions of staff, the applicant or any member of the public who testified.
5. When the Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either approve, deny, or “continue” the public hearing.

PROCESS FOR QUASI-JUDICIAL PUBLIC HEARINGS

A “quasi-judicial” public hearing is typically held for annexations, planning district changes, variances, conditional use permits, comprehensive plan changes, and appeals from subdivisions, partitions and architectural review.

1. The Mayor opens the public hearing and identifies the case to be considered.
2. A staff member presents the staff report to the Council.
3. Public testimony is taken:
 - a) In support of the application
 - b) In opposition or neutral
4. The Council then asks questions of staff, the applicant or any member of the public who testified.
5. When the Council has finished its questions, the Mayor closes the public hearing.
6. When the public hearing is closed, Council will then deliberate to a decision and a motion will be made to either approve, approve with conditions or deny the application, or “continue” the public hearing.

TIME LIMITS

The purpose of time limits on public hearing testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony. All persons providing testimony **shall be limited to 10 minutes**, subject to the right of the Mayor to amend or waive the time limits.

EXECUTIVE SESSION INFORMATION

Executive session is a portion of the Council meeting that is closed to the public to allow the Council to discuss certain confidential matters. No decisions are made in Executive Session. The City Council must return to the public session before taking final action.

The City Council may go into Executive Session under the following statutory provisions to consider or discuss: *ORS 192.660(2)(a)* the employment of personnel; *ORS 192.660(2)(b)* the dismissal or discipline of personnel; *ORS 192.660(2)(d)* labor relations; *ORS 192.660(2)(e)* real property transactions; *ORS 192.660(2)(f)* non-public information or records; *ORS 192.660(2)(g)* matters of commerce in which the Council is in competition with other governing bodies; *ORS 192.660(2)(h)* current and pending litigation issues; *ORS 192.660(2)(i)* employee performance; *ORS 192.660(2)(j)* investments; or *ORS 192.660(2)(m)* security issues. **All discussions within this session are confidential.** Therefore, nothing from this meeting may be disclosed by those present. News media representatives are allowed to attend this session (unless it involves labor relations), but shall not disclose any information discussed during this session.



A. CALL TO ORDER

Pledge of Allegiance

B. PRESENTATIONS, ANNOUNCEMENTS, SPECIAL REPORTS

1. New Employee Introductions

Victoria Eggleston – Volunteer Coordinator

Diane Alcibar – Library Assistant

Christian Carnahan – Library Assistant

Amber Quinn – Library Assistant

Postponed to future meeting

2. Tualatin Youth Advisory Council Update

3. Emergency Preparedness Update – Operations Director Dan Boss

C. CITIZEN COMMENTS

This section of the agenda allows citizens to address the Council regarding any issue not on the agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

D. CONSENT AGENDA (Item Nos. 1 – 3)

Page #

The Consent Agenda will be enacted with one vote. The Mayor will first ask the staff, the public and the Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. The matters removed from the Consent Agenda will be considered individually at the end of this Agenda under "Items Removed from the Consent Agenda." At that time, any member of the audience may comment on any item pulled from the Consent Agenda. The entire Consent Agenda, with the exception of items removed to be discussed under "Items Removed from the Consent Agenda," is then voted upon by roll call under one motion.

1. Resolution No. _____ Amending the Intergovernmental Agreement with the..... 5
Willamette River Water Coalition
[Removed from the Agenda in its Entirety]
2. Resolution No. 4817-08 Authorizing Construction Management/Maintenance21
Agreement with the Oregon Department of Transportation,
Washington County and City of Tigard for SW 72nd Avenue,
SW Lower Boones Ferry Road, and SW Bridgeport Road
3. Change Order No. 4 to the Contract Documents for Construction of the Library/City38
Offices Expansion and Remodel Project

E. PUBLIC HEARINGS – Legislative or Other

None.

F. PUBLIC HEARINGS – Quasi-Judicial

None.

G. GENERAL BUSINESS (Item Nos. 1 – 2)

1. Ordinance No. 1268-08 Amending the Historic Landmark Demolition Criteria;42
and Amending TDC 68.060 and 68.080 (PTA-08-03)
2. Ordinance No. 1269-08 Relating to Water Service; Amending Water Service48
Changing Delinquent Account Provisions; and
Amending TMC 3-3-030, 3-3-140 and 3-3-170

H. ITEMS REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

I. COMMUNICATIONS FROM COUNCILORS**J. EXECUTIVE SESSION****K. ADJOURNMENT**

CITY COUNCIL MEETING SIGN-UP SHEET

PLEASE COMPLETE TO GIVE TESTIMONY

DATE: August 11, 2008

PLEASE LIMIT TESTIMONY TO THREE MINUTES

PLEASE PRINT CLEARLY				AGENDA ITEM(S)	PROPONENT (if applicable)	OPPONENT (if applicable)
NAME	ADDRESS	REPRESENTING (if applicable)				



STAFF REPORT CITY OF TUALATIN

Approved By Tualatin City Council
Date 8-11-08
Recording Secretary M. Smith

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Michael A McKillip, City Engineer *McK*
Dayna Webb, Project Engineer *DW*

DATE: August 11, 2008

SUBJECT: RESOLUTION AUTHORIZING CONSTRUCTION
MANAGEMENT/MAINTENANCE AGREEMENT WITH THE
OREGON DEPARTMENT OF TRANSPORTATION,
WASHINGTON COUNTY AND CITY OF TIGARD FOR SW 72ND
AVENUE, SW LOWER BOONES FERRY ROAD, AND SW
BRIDGEPORT ROAD

ISSUE BEFORE THE COUNCIL:

Consideration of whether the Council should adopt a resolution authorizing construction management/maintenance agreement with the Oregon Department of Transportation (ODOT), Washington County (County) and City of Tigard (Tigard) for SW 72nd Avenue, SW Lower Boones Ferry Road, and SW Bridgeport Road.

RECOMMENDATION:

Staff recommends that the Council adopt the attached resolution authorizing Construction Management/Maintenance Agreement with the Oregon Department of Transportation (ODOT), Washington County (County) and City of Tigard (Tigard) for SW 72nd Avenue, SW Lower Boones Ferry Road, and SW Bridgeport Road.

EXECUTIVE SUMMARY:

The City of Tualatin Approved with Conditions the Bridgeport Village project (AR 03-09) in July in 2003.

The following are the obligation of the City of Tualatin in the Agreement:

- Ensure maintenance of landscaping, pavement sweeping, and irrigation on areas of ODOT, County and Tualatin road jurisdiction as shown on Exhibit B of the Agreement

- Ensure maintenance of storm sewer areas as shown on Exhibit C of the Agreement
- Reimburse ODOT quarterly for 100 percent of all power costs incurred for the traffic signal and associated illumination at the intersection of SW Lower Boones Ferry Road and SW McEwen Road/65th Avenue
- Maintain the pavement surrounding the vehicle detector loops installed in the city streets of the of the SW Lower Boones Ferry Road and SW McEwan Road/65th Avenue intersection
- Maintain all project improvements within Tualatin right of way limits and jurisdiction including, any/all pavement, signage, striping, illumination, storm and sewer facilities, landscaping and irrigation
- Maintain access control and management as-is within the influence area of I-5, as shown in Exhibit D of the Agreement

The items in this agreement were reached as part of the Bridgeport Village Development process. The obligations of Tualatin are similar to what Tualatin was committed to before Bridgeport Village. The new obligations include landscaping, pavement sweeping, irrigation and storm sewer on areas of ODOT and County road jurisdiction. These items were taken on by Tualatin to allow the street trees on ODOT and County roadways.

OUTCOMES OF DECISION:

Authorizing the Construction Management/Maintenance Agreement will result in the following:

- Ability to move forward with the multi-agency Agreement
- Provides opportunity for street trees to be planted along County and ODOT roadways in the area of the Agreement

Not authorizing the Construction Management/Maintenance Agreement will result in the following:

- Inability to move forward with the multi-agency Agreement

FINANCIAL IMPLICATIONS:

There are minor impacts on utility funds as a result of this work. Costs to be paid by ratepayers.

Attachments: A. Resolution with attachments

RESOLUTION NO. 4817-08

RESOLUTION AUTHORIZING CONSTRUCTION
MANAGEMENT/MAINTENANCE AGREEMENT WITH THE
OREGON DEPARTMENT OF TRANSPORTATION, WASHINGTON
COUNTY AND CITY OF TIGARD FOR SW 72ND AVENUE, SW
LOWER BOONES FERRY ROAD, AND SW BRIDGEPORT ROAD

WHEREAS the City will ensure maintenance of landscaping, pavement sweeping, and irrigation on areas of ODOT, County and Tualatin road jurisdiction as shown on Exhibit B of the Agreement; and

WHEREAS the City will ensure maintenance of storm sewer areas as shown on Exhibit C of the Agreement; and

WHEREAS the City will reimburse ODOT quarterly for 100 percent of all power costs incurred for the traffic signal and associated illumination at the intersection of SW Lower Boones Ferry Road and SW McEwen Road/65th Avenue; and

WHEREAS the City will maintain the pavement surrounding the vehicle detector loops installed in the city streets of the of the SW Lower Boones Ferry Road and SW McEwan Road/65th Avenue intersection; and

WHEREAS the City will maintain all project improvements within Tualatin right of way limits and jurisdiction including, any/all pavement, signage, striping, illumination, storm and sewer facilities, landscaping and irrigation; and

WHEREAS the City agrees to maintain access control and management as-is within the influence area of I-5, as shown in Exhibit D of the Agreement; and

WHEREAS the Mayor and City Recorder are authorized to enter into said Construction Management/Maintenance Agreement.

BE IT RESOLVED BY THE CITY COUNCIL, CITY OF TUALATIN, OREGON that:

Section 1. The attached Construction Management/Maintenance Agreement is for the purpose of identifying the responsibilities of maintenance and allowing the installation of landscape improvements along County and ODOT roadways.

Section 2. The Mayor and City Recorder are authorized to sign the attached Construction Management/Maintenance Agreement.

ADOPTED AND APPROVED this 11th day of August, 2008.

CITY OF TUALATIN, OREGON

By



Mayor

ATTEST:

By


City Recorder

Approved as to legal form:


City Attorney

CONSTRUCTION MANAGEMENT/MAINTENANCE AGREEMENT

SW 72nd Avenue, Lower Boones Ferry Road, and SW Bridgeport Road
Washington County
City of Tualatin
City of Tigard

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, by and through its Department of Transportation, hereinafter referred to as "ODOT"; WASHINGTON COUNTY, acting by and through its Board of Commissioners, hereinafter referred to as "COUNTY"; the CITY OF TUALATIN, a political subdivision of the State of Oregon, acting by and through its City Council, hereinafter referred to as "TUALATIN"; and the CITY OF TIGARD, a political subdivision of the State of Oregon, acting by and through its City Council, hereinafter referred to as "TIGARD".

RECITALS

1. Portions of SW Lower Boones Ferry Road are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. Pacific Highway (Interstate 5, I-5) is also a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. SW Bridgeport Road and a portion of SW 72nd Avenue are County roads under the jurisdiction and control of the COUNTY. A portion of SW 72nd Avenue is a city street under the jurisdiction and control of TIGARD. SW 65th Avenue/McEwan Road is a city street under the jurisdiction and control of TUALATIN.
2. By the authority granted in ORS 190.110, 366.572, and 366.576, ODOT may enter into cooperative agreements with the counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. By the authority granted in ORS 810.210, ODOT is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where ODOT deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than ODOT, except with its written approval. Traffic signal work on this Project will conform to the current ODOT standards and specifications.
4. ODOT and COUNTY entered into a Property Transfer Agreement No. 20860 dated March 12, 2004, for the purpose of transferring certain ODOT surplus property and operating right of way in exchange for the County's agreement to assume ownership and maintenance responsibility of certain road segments, and to convey to ODOT equivalent monetary value.

M.C. & A. NO. 21894
Washington County
City of Tualatin
City of Tigard

The County's roadway improvement project in the vicinity of SW 72nd Avenue and Lower Boones Ferry Road, and related roadway improvements required as a condition of a new development called Bridgeport Village are hereinafter collectively referred to as the "Project". With the execution of this Agreement, all obligations of said agreement No. 20860 have been satisfied and it shall cease to have any effect.

5. ODOT, COUNTY, and TUALATIN entered into Preliminary Engineering and Construction Finance Agreement No. 7931 dated May 15, 1984 for the purpose of installing and identifying maintenance and power costs associated with the traffic signals on Lower Boones Ferry Road at the intersections of SW Bridgeport Road/SW 72nd Avenue, I-5 north and south bound ramps, and SW Meridian which has since been renamed as SW 65th/McEwan Road. This Agreement No. 21,894 shall supersede said previous agreement in the area of maintenance and power of said signals.

NOW, THEREFORE, the premises being in general as stated in the foregoing RECITALS, it is agreed by and between the parties hereto as follows:

TERMS OF AGREEMENT

1. The purpose of this Agreement is to memorialize certain obligations surrounding the construction and maintenance of the COUNTY's constructed Project. The Project includes: reconstruction of the SW Lower Boones Ferry Road/SW Bridgeport Road/SW 72nd Avenue intersection and the realignment of both SW 72nd Avenue and SW Lower Boones Ferry Road to accommodate the new intersection. The Project also includes removal and replacement of the traffic signal at the SW Lower Boones Ferry Road/SW Bridgeport Road/SW 72nd Avenue intersection; drainage work, illumination, and landscaping. The Project limits and jurisdictional information are approximately as shown on the area map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the Project.

ODOT OBLIGATIONS

1. ODOT hereby grants the COUNTY and TUALATIN the right to enter onto ODOT right of way for the purpose of Project maintenance.
2. ODOT's District 2A Office has issued a Permit No. # 2AM38454 to the COUNTY and the Developer of Bridgeport Village to "Occupy and Perform Operations on a State Highway".

3. ODOT shall own the four (4) interconnected traffic signals (and associated illumination) on Lower Boones Ferry Road at SW McEwan Road /65th Avenue , SW Bridgeport Road/SW 72nd Avenue, and at the northbound and southbound on and off ramps to I-5. ODOT will provide maintenance and power for all four (4) traffic signals (and associated illumination) and shall bill TUALATIN for the power costs for the traffic signal at the intersection of SW McEwan Road /65th Avenue and shall bill COUNTY for 50 percent of all power and maintenance costs for the traffic signal at the intersection of SW Bridgeport Road /SW 72nd Avenue. ODOT shall, at its own expense, be responsible for all costs for the traffic signals at the I-5 on and off ramps. ODOT shall maintain complete control of the timing for all four (4) signals and shall consider TUALATIN and COUNTY input for said timing plans.
4. ODOT shall, at its own expense, maintain all Project improvements within ODOT right of way limits including, all pavement, curb and sidewalk, signing, striping, signals, and illumination, with the exception of landscaping, pavement sweeping, and irrigation, which shall be TUALATIN's responsibility and further addressed under TUALATIN OBLIGATIONS, and as shown on Exhibit B, attached hereto and by this reference made a part hereof; and with the exception of that portion of the realigned Lower Boones Ferry Road (from, and including, its intersection with SW 72nd Avenue/Bridgeport Road southerly to County's existing line of ownership), which will remain owned by ODOT but shall be the COUNTY'S responsibility to maintain as further described under COUNTY OBLIGATIONS. Ownership and permitting authority for said portion of Lower Boones Ferry Road shall remain an ODOT responsibility. The abandoned portion of the former location of Lower Boones Ferry Road is retained by ODOT and is currently being maintained by TriMet as part of its South Park and Ride lot under separate agreement No. 22284 between ODOT and TriMet. All storm water maintenance shall be maintained as shown on Exhibit C, attached hereto and by this reference made a part hereof.
5. ODOT shall, at its own expense, be responsible for the maintenance of methylemethacrylate "MMA" striping for the entire Project for five (5) years from the initial installation, including pavement legends, up to the first overlay project. Major pavement overlays will be separately negotiated in the future.

COUNTY OBLIGATIONS

1. COUNTY shall, as agreed to in Agreement No. 20860 and at its own expense, continue to have complete maintenance and operation responsibilities for the newly constructed section of Lower Boones Ferry Road from, and including, its intersection with SW Bridgeport Road /SW 72nd Avenue southerly along the west side of I-5 to the limits of work done under permit identified in ODOT Obligations No. 2, as shown on Exhibit A, including but not limited to all roadway, curb and sidewalk, retaining or sound walls, illumination, storm water facilities, and landscaped medians. ODOT shall continue to retain roadway ownership and permitting rights for this section of roadway for access control purposes.

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City of Tualatin
City of Tigard

2. COUNTY shall continue to have jurisdiction and be responsible for maintenance and control of SW 72nd Avenue from the southerly curblane of its intersection with the traffic signal at the North Park and Ride lot southward to the northerly curblane at the intersection of SW Bridgeport Road /Lower Boones Ferry Road; as shown in Exhibit A.
3. The COUNTY has obtained a permit to "Occupy or Perform Operations upon a State Highway" from ODOT's District 2A Office. The COUNTY, its contractors, subcontractors, or consultants performing Project work shall comply with all provisions of said permit.
4. COUNTY shall, upon receipt of ODOT's billings, reimburse ODOT quarterly for 50 percent of all power and maintenance costs incurred for the traffic signal and associated illumination at the intersection of SW Lower Boones Ferry Road /SW 72nd Avenue/SW Bridgeport Road. Road maintenance (including pavement, curbs, sidewalk, signal loops) for said intersection shall be performed by the COUNTY at its own expense, see Exhibit A for exact location.
5. COUNTY shall, upon completion of the Project and at its own expense, maintain the pavement surrounding the vehicle detector loops installed in the COUNTY roads of the SW Lower Boones Ferry Road/SW 72nd Avenue/SW Bridgeport Road intersection in such a manner as to provide adequate protection for said detector loops. If for any reason, said detector loops become damaged due to any fault of the COUNTY's, ODOT may require the COUNTY to repair or replace said loops at COUNTY expense.
6. COUNTY shall authorize execution of this Agreement during a regularly convened session of its Board of Commissioners.

TUALATIN OBLIGATIONS

1. TUALATIN shall, at its own expense, ensure maintenance of landscaping, pavement sweeping, and irrigation on areas of ODOT, COUNTY and TUALATIN road jurisdiction as shown on Exhibit B. Water and power for irrigation during and after establishment period will be at TUALATIN's own expense.
2. TUALATIN shall, at its own expense, ensure maintenance of storm sewer areas as shown on Exhibit C.
3. TUALATIN shall, upon receipt of ODOT's billings, reimburse ODOT quarterly for 100 percent of all power costs incurred for the traffic signal and associated illumination at the intersection of SW Lower Boones Ferry Road, and SW McEwan Road/65th Avenue.

*M.C. & A. NO. 21894
Washington County
City of Tualatin
City of Tigard*

4. TUALATIN shall, upon completion of the Project and at its own expense, maintain the pavement surrounding the vehicle detector loops installed in the city streets of the SW Lower Boones Ferry Road and SW McEwan Road /65th Avenue intersection in such a manner as to provide adequate protection for said detector loops. If for any reason, said detector loops become damaged due to any fault of TUALATIN's, ODOT may require TUALATIN to repair or replace said loops at TUALATIN expense.
5. TUALATIN shall maintain all Project improvements within TUALATIN right of way limits and jurisdiction including, any/all pavement, signing, striping, illumination, storm and sewer facilities, landscaping, and irrigation.
6. TUALATIN agrees to maintain access control and management as-is within the influence area of I-5, as shown in Exhibit D and as per the ODOT OAR 734-51 Access Management Spacing Standards, unless proposed changes are agreed to by ODOT under the provisions of OAR 734-51. ODOT approval of changes will not be unreasonably withheld.
7. TUALATIN shall adopt a resolution authorizing its designated city officials to enter into and execute this Agreement.

TIGARD OBLIGATIONS

1. TIGARD agrees to continue to be fully responsible for all jurisdiction, control, and maintenance of that portion of SW 72nd Avenue, within the Project limits and as shown on Exhibit A, including the traffic signal at the entrance to the North Park and Ride lot.
2. TIGARD shall maintain all Project improvements within TIGARD right of way limits and jurisdiction including, any/all pavement, signing, traffic signal (as mentioned above) illumination, striping, storm and sewer facilities, landscaping, and irrigation.
3. TIGARD shall adopt a resolution authorizing its designated city officials to enter into and execute this Agreement.

GENERAL OBLIGATIONS

1. This Agreement is expressly subject to the debt limitation of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
2. ODOT, COUNTY, TUALATIN, and TIGARD shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the other party(s) and its members, its officers and its employees from all claims, suits, and

liabilities, which may occur in the performance of this Agreement by the respective indemnifying party.

3. Notwithstanding the foregoing defense obligations under paragraph 3 above, no party to this Agreement nor any attorney engaged by any party to this Agreement shall defend any claim in the name of the other party(s) or any agency/department/division of such other party(s), nor purport to act as legal representative of the other party(s) or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party(s). Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other party(s) is prohibited from defending it, or that other party(s) is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party(s) to do so. Each party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.
4. ODOT, COUNTY, TUALATIN, and TIGARD agree that all employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Each party to this Agreement shall ensure that each of its subcontractors complies with these requirements.
5. ODOT, COUNTY, TUALATIN, and TIGARD shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, each party expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
6. The parties acknowledge and agree that each party, the Oregon Secretary of State's office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of each party that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts. All parties shall retain and keep all files and records for a minimum of six (6) years following termination of the Agreement.
7. ODOT, COUNTY, TUALATIN, or TIGARD may terminate this Agreement effective upon delivery of written notice to the other parties to this Agreement or at such later date as may be established by any party to this Agreement, under any of the following conditions:

- a. If any party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If any party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT or another party fails to correct such failures within thirty (30) calendar days or such longer period as ODOT or the other parties may authorize.
 - c. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited.
8. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. Termination of this Agreement as to one party shall not terminate this Agreement as to the other parties.
9. The parties to this Agreement are of equal authority. Each party acts independently in the performance of its obligations and functions under this Agreement, and no party is to be considered the agent of the other.
10. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
11. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any party unless in writing and signed by all parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any party to enforce any provision of this Agreement shall not constitute a waiver by the other parties of that or any other provision.

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IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Deputy Director, Highways; to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Oregon Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director.

Signature page to follow

M.C. & A. NO. 21894
Washington County
City of Tualatin
City of Tigard

RECOMMENDED APPROVAL

By _____
District 2A Manager

Date _____

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
Region 1 Manager

Date _____

CITY OF TUALATIN,
By and through its City Council

By _____
Mayor

By _____
Recorder

Date _____

**APPROVED AS TO
LEGAL SUFFICIENCY:**

By _____
Asst. Attorney Gen.

Date _____

By _____
County Attorney

Date _____

STATE OF OREGON,
By and through its
Department of Transportation

By _____
Deputy Director, Highways

Date _____

WASHINGTON COUNTY,
by and through its Board of
Commissioners

By _____
Chair

Date _____

CITY OF TIGARD,
By and through its City Council

By _____
City Manager

Date _____

By _____
Tigard Attorney

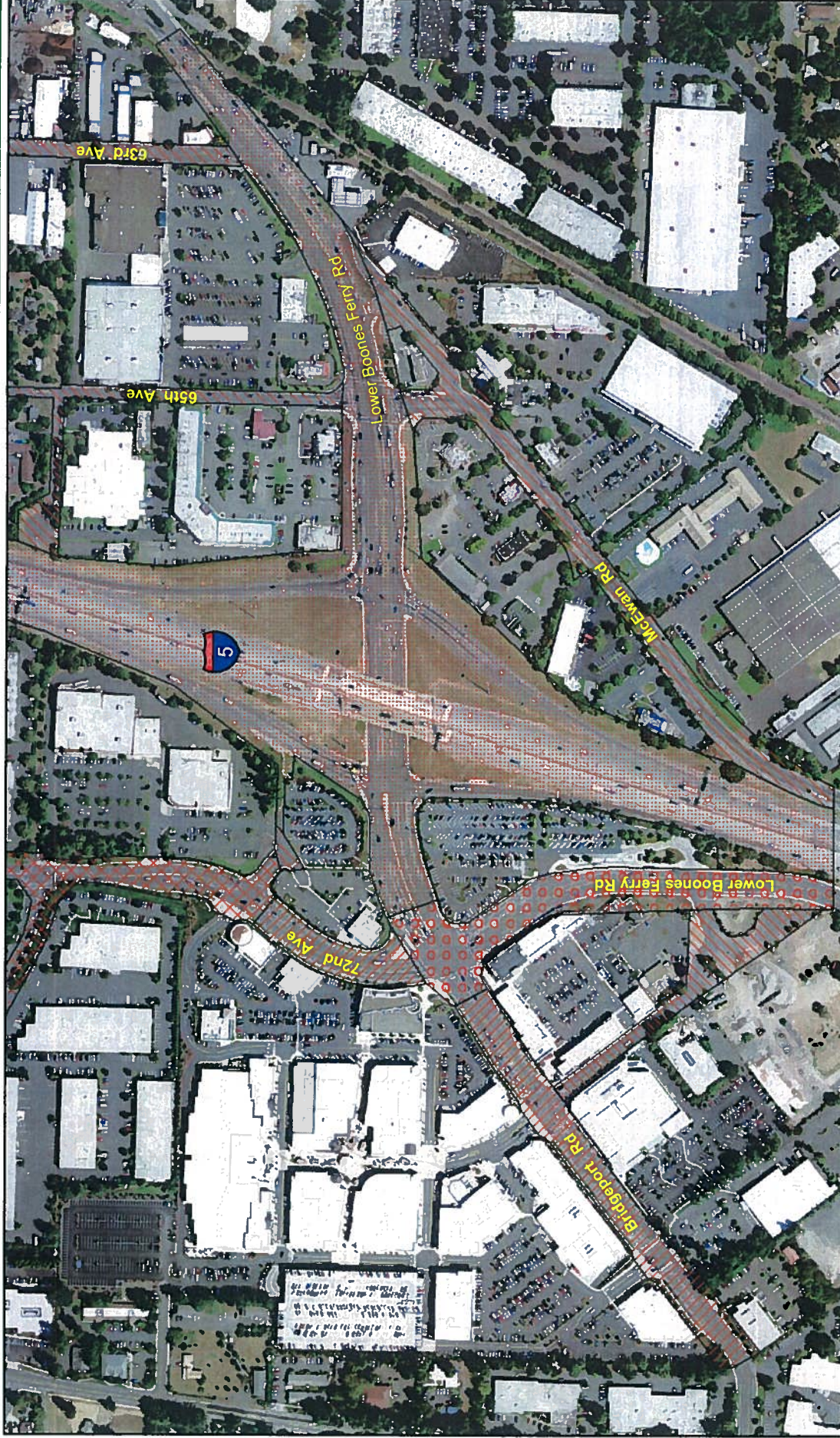
Date _____






By Brenda L. Braden
Tualatin Attorney

Date 8/11/08

Exhibit A: I5-Lower Boones Ferry Rd Interchange- Road Jurisdictions

Air Photo: July 2007



-  TUALATIN
-  WASHINGTON COUNTY
-  ODOT
-  ODOT Owned/Washington County Maintained
-  TIGARD



RF 1:3,200

This map is derived from various digital database sources. The City of Tualatin assumes no responsibility or liability for any errors or omissions in the information. This map is provided "as is" by Engineering and Building Department. Printed 7/28/2005

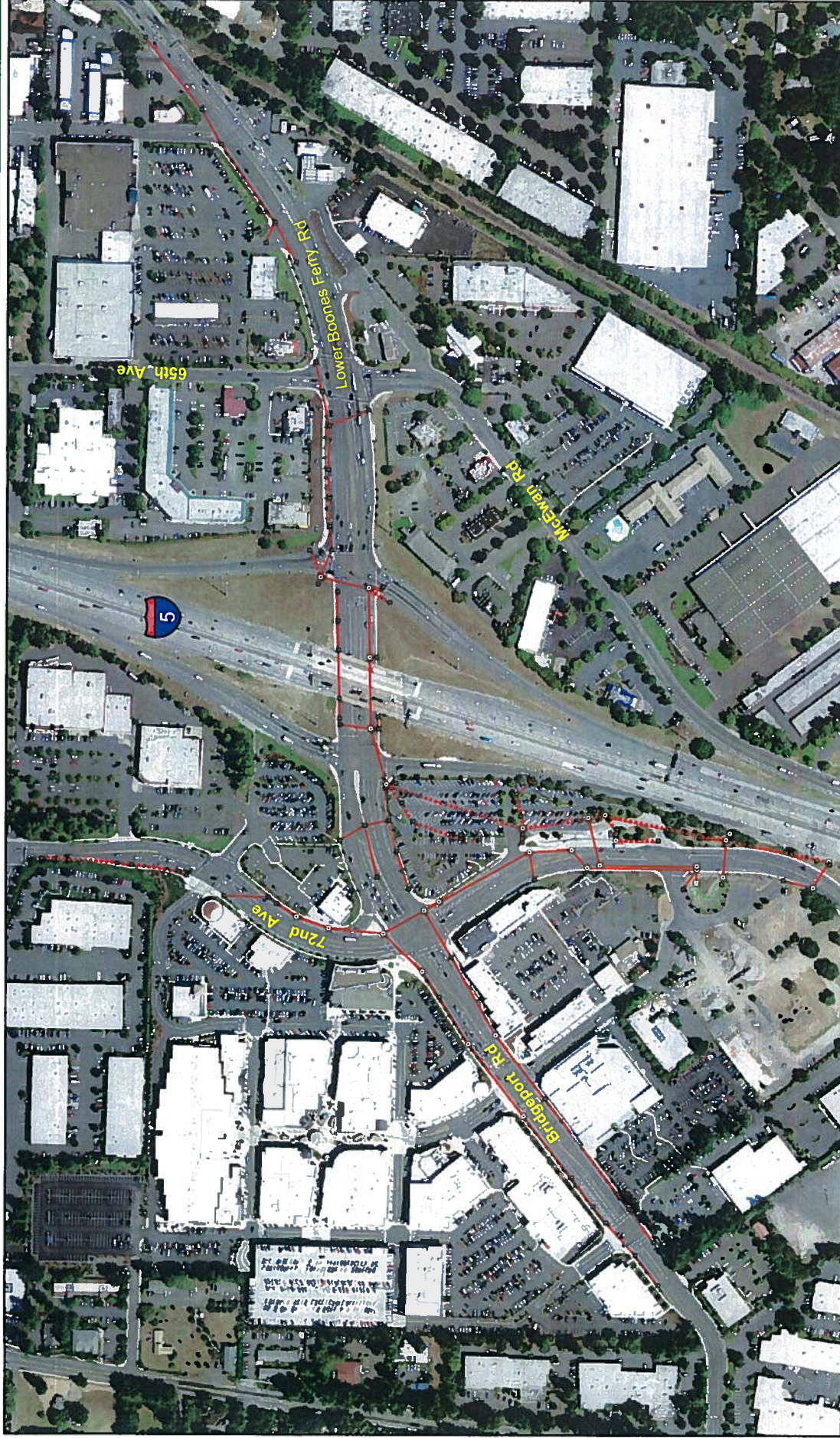


RF 1:3,200

This map is derived from various digital database sources. The City of Tualatin assumes no responsibility or liability for any errors or omissions in the information. This map is provided "as is" - Engineering and Building Department
Printer 7/28/2006

Exhibit C: I5-Lower Boones Ferry Rd Interchange- Drainage Responsibilities

Air Photo: July 2007

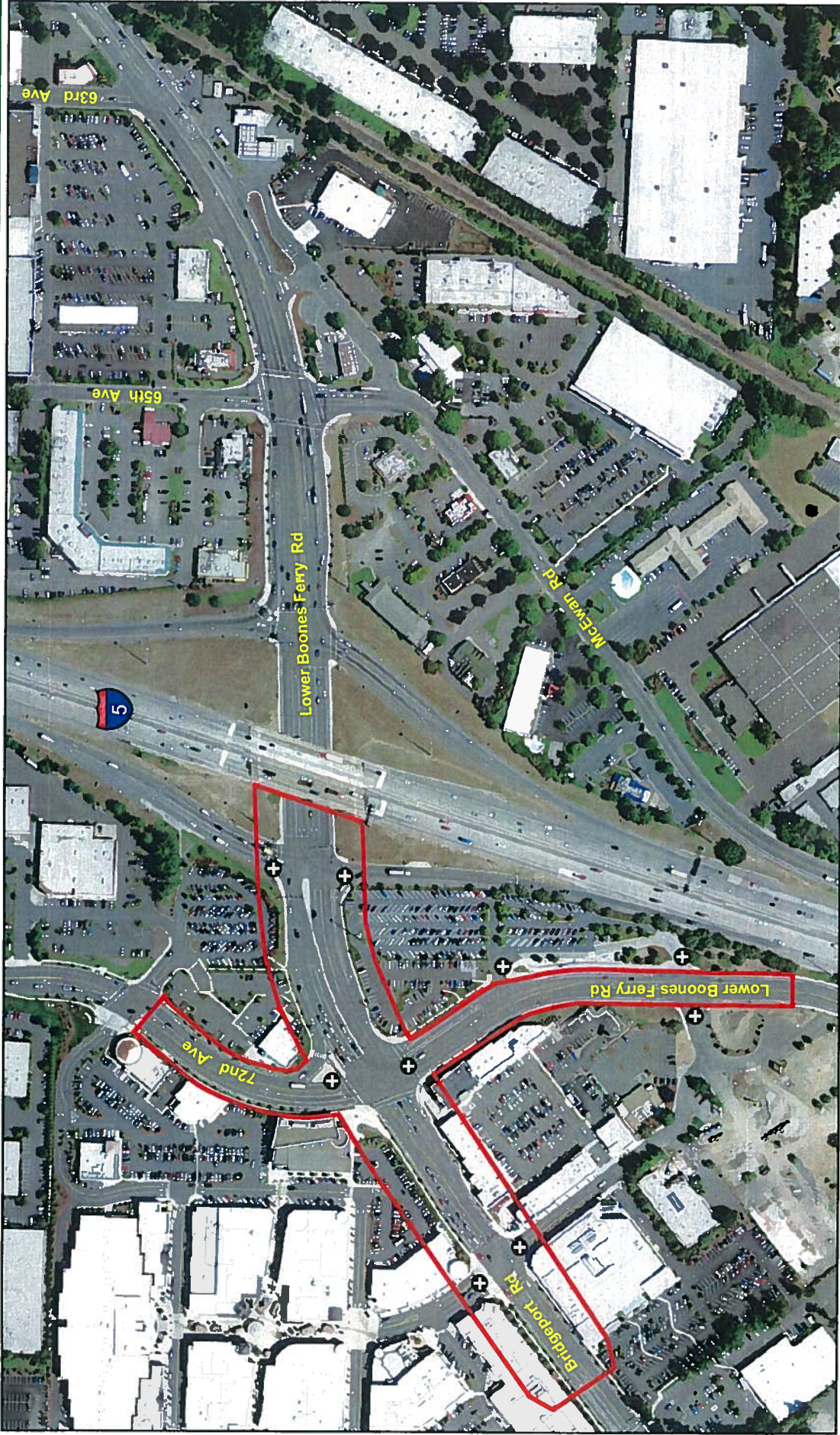


- Tualatin
- ODOT
- Tigard
- Catch Basin
- Manhole
- Outlet
- Water Quality Facility



RF 1:3,200

This map is derived from various digital database sources. While an attempt has been made to ensure the accuracy of the map, the City of Tualatin assumes no responsibility or liability for any errors or omissions in the information. This map is provided as a reference only. Engineering and Building Department
Project 17202005



+ Current Access Points

Extent of Interchange Access Influence Area

RF 1:2,600

This map is derived from various digital database sources. While an attempt has been made to ensure the accuracy of the map, the City of Tualgis assumes no responsibility or liability for any errors or omissions in the information. This map is provided as a reference only. Engineering and Building Department. Printed 7/26/2005



[Signature]

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *[Signature]*

FROM: Paul Hennon, Community Services Director *[Signature]*

DATE: August 11, 2008

SUBJECT: CHANGE ORDER NO. 4 TO THE CONTRACT DOCUMENTS FOR CONSTRUCTION OF THE LIBRARY/CITY OFFICES EXPANSION AND REMODEL PROJECT

ISSUE BEFORE THE COUNCIL:

Council will consider approval of Change Order No. 4 to the construction of the Library/City Offices Expansion and Remodel Project.

RECOMMENDATION:

Approve the attached Change Order No. 4 and authorize the City Manager to execute said Change Order No. 4.

EXECUTIVE SUMMARY:

- The Construction Manager/General Contractor (CM/GC) contract was awarded to P & C Construction Company of Gresham, Oregon on October 9, 2006, and the Guaranteed Maximum Price (GMP) in the amount of \$7,148,798 was approved on May 14, 2007. Change Orders 1, 2, and 3. increased the GMP to \$7,541,781.
- This change order increases the GMP by \$275,764 for work that was not included in the original scope of work (as described on the attached Change Order No. 4 and including a water feature that was added at Council direction to enhance enjoyment of the plaza) and brings the new GMP to \$7,817,545. The contract time will be increased by zero (0) days as a result of this change order.
- Project Schedule: The project is well ahead of schedule and opened on July 11, 2008. The Grand Opening Celebration was held on August 9. The contractual date for completion is October 1, 2008.

**STAFF REPORT: CHANGE ORDER NO. 4 TO THE CONTRACT DOCUMENTS FOR
CONSTRUCTION OF THE LIBRARY/CITY OFFICES EXPANSION AND REMODEL
PROJECT**

August 11, 2008

Page 2 of 2

OUTCOMES OF DECISION:

Authorization of this change order will enable the project to continue on schedule and within budget.

FINANCIAL IMPLICATIONS:

The new GMP is 9 percent above the original GMP. The revised total is within the amounts budgeted for this project.

The project is near completion. One additional change order is anticipated to wrap up the project. There are reasonable contingency funds relative to the progress of the project, however use of the remaining funds will require close attention.

Attachments: A. Change Order No. 4

c: Steve Anderson, P&C Construction Company
Skip Stanaway, SRG Partnership, Inc
Members of the Tualatin Library Advisory Committee (TLAC)

AIA® Document G701™ – 2001

Change Order

PROJECT (Name and address): Tualatin Library Addition 18880 SW Martinazzi Avenue Tualatin, Oregon 97062	CHANGE ORDER NUMBER: 004 DATE: July 01, 2008	OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
TO CONTRACTOR (Name and address): P&C Construction Company P.O. Box 410 Gresham, Oregon 97030	ARCHITECT'S PROJECT NUMBER: CONTRACT DATE: October 09, 2006 CONTRACT FOR: General Construction	

THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

SEE ATTACHED CHANGE ORDER LOG, CHANGE ORDER #4.

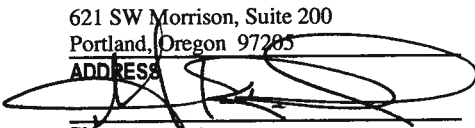

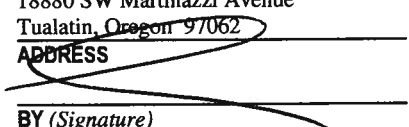
The original Guaranteed Maximum Price was	\$ 7,148,798.00
The net change by previously authorized Change Orders	\$ 392,983.00
The Guaranteed Maximum Price prior to this Change Order was	\$ 7,541,781.00
The Guaranteed Maximum Price will be increased by this Change Order in the amount of	\$ 275,764.00
The new Guaranteed Maximum Price including this Change Order will be	\$ 7,817,545.00

The Contract Time will be increased by Zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

SRG Partnership ARCHITECT (Firm name) 621 SW Morrison, Suite 200 Portland, Oregon 97205 ADDRESS  BY (Signature) Cary Davidson (Typed name) 7/10/08 DATE	P&C Construction Company CONTRACTOR (Firm name) P.O. Box 410 Gresham, Oregon 97030 ADDRESS  BY (Signature) Steve Malany, President (Typed name) 7/7/08 DATE	City of Tualatin OWNER (Firm name) 18880 SW Martinazzi Avenue Tualatin, Oregon 97062 ADDRESS  BY (Signature) Lou Ogden, Mayor (Typed name) 8-11-08 DATE
---	--	---



Construction Company

**P.O. Box 410
Gresham, OR 97030-0023
503) 665-0165
fax 503) 667-2565**

**CONTRACT CHANGE ORDER #4
P&C CONSTRUCTION PROJECT #06069
TUALTIN PUBLIC LIBRARY AND CITY OFFICE ADDITION**

7/7/2008

	Project GMP	\$7,148,798
Change Order #1 total		\$216,291
Change Order #2 total		\$86,540
Change Order #3 total		\$90,152

PCO #	Description	Cost / Credit
60	PR #21 & 11/8/07 email - replace existing exterior faucet with new boot wash.	\$567
105	Price to slurry coat the north parking lot	\$3,630
106	PR-27 Add water feature to monument sign	\$200,000
107	PR-22 Add power and lighting to landscaping & street trees	See option A & F
	Option A - install only the empty conduit	\$11,197
	Option F - install tree lights and outlets to (4) trees near water feature	\$20,712
125	Added fire treating of the exposed wood roof structure <dry heads>	\$1,382
154	Add concrete pedestal in plaza for art sculpture	\$6,977
156	IB-23 - Revised sidewalks & curbs near Teen Room	\$610
160	RFI #189 - Delete fry reglet in teen room	(\$189)
163	Delete MP on trash gates, add wood	\$751
164	Add louver blinds to new city office windows	\$677
165	RFI #194 - Add concrete by loading space in north parking lot?	\$705
166	PR#30 - Add lighting for the interpretative display	\$2,379
169	Delete blinds for relites & transoms for RMs 126 & 127 as redlined on submittals	(\$249)
171	PR#31 - Add power & mounting frame work for 5 Wi-Fi locations	\$4,931
172	RFI #198 - the curb east of loading stall had to be removed and replaced	\$1,247
173	RFI #199 - remove and replace additional existing AC in the north parking lot	\$7,233
176	Revisions to the signage package	\$566
180 R	Per KLS site review of lighting, a D12 fixture was added to the women's restroom	\$789
182	RFI #206 - add landscaping to east side of middle parking lot	\$3,357
185	PR #33 - added stenciling and signage to parking lots	\$864
186	RFI #209 - Add 2 emergency lights to the staff work room	\$2,847
195	Relocate LED power supplies in Children's room	\$536
196	Relocate fire alarm pull station in Community Room	\$501
197	Relocate occupancy sensors in open office 164 in city offices	\$343
198	Re-feed site light pole near Martinazzi	\$3,401
	Change Order #4 total	\$275,764
	REVISED GMP	\$7,817,545



Approved By Tualatin City Council
Date 8-11-08
Recording Secretary M. Smith

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Brenda Braden, City Attorney *BB*

DATE: August 11, 2008

SUBJECT: AN ORDINANCE AMENDING THE HISTORIC LANDMARK
DEMOLITION CRITERIA; AND AMENDING TDC 68.060 AND
68.080 (PTA-08-03).

ISSUE BEFORE THE COUNCIL:

Whether the City Council should approve an ordinance that amends the criteria for demolition of a historic landmark.

RECOMMENDATION:

Staff recommends that the City Council approve the ordinance granting PTA-08-03 with modifications as directed.

EXECUTIVE SUMMARY:

On June 9, 2008, the City Council held a legislative hearing (PTA-08-03) to decide whether to initiate a draft amendment to the Tualatin Development Code (TDC) that would amend Chapter 68 – Historic Preservation, to make changes to its historic landmark demolition criteria. This hearing was continued until July 28, 2008. At the close of the public hearing, Council approved the Staff Report dated July 28, 2008, by a vote of 5-0, and directed Staff to bring back an ordinance adopting PTA-08-03 with additional language inserted to clarify that the Community Development Director could deny an application if one of the three criteria were not met. That language is included in Section 1 of the attached ordinance.

FINANCIAL IMPLICATIONS:

The Applicant is the City of Tualatin Community Development Department. No fee is required. Funds have been budgeted in the Planning Division's FY07/08 budget to prepare and process City-initiated amendments.

- Attachments:**
- A. Ordinance
 - B. Exhibit A – Affidavit of Publication
 - C. Exhibit B – Affidavit of Posting
 - D. Exhibit C – Affidavit of Mailing
 - E. Exhibit D – Staff Reports dated July 28, 2008
and June 9, 2008

ORDINANCE NO. 1268-08

AN ORDINANCE AMENDING THE HISTORIC LANDMARK
DEMOLITION CRITERIA; AND AMENDING TDC 68.060 AND
68.080 (PTA-08-03).

WHEREAS Tualatin Development Code (TDC) 68.060 establishes criteria for the
for the demolition of a historic landmark; and

WHEREAS the Staff recommends to Council that the TDC be amended to clarify
the criteria and formally involve the Tualatin Historical Society (THS); and

WHEREAS the Tualatin Planning Advisory Committee (TPAC) recommends to
Council that the TDC be amended to clarify and improve the criteria; and

WHEREAS Council finds the amendment to be appropriate; and

WHEREAS upon the application of the City of Tualatin Community Development
Department, a public hearing was held before the Tualatin City Council on June 9,
2008, and continued on July 28, 2008, related to amending the historic landmark
demolition criteria, and amending TDC 68.060 and 68.080 (PTA-08-03); and

WHEREAS notice of public hearing was given as required under the Tualatin
Community Plan by publication on May 22, 2008, in The Times, a newspaper of general
circulation within the City, which is evidenced by the Affidavit of Publication marked
"Exhibit A," attached and incorporated by this reference; by posting a copy of the notice
in two public and conspicuous places within the City, which is evidenced by the Affidavit
of Posting marked "Exhibit B," attached and incorporated by this reference; and by
mailing to property owners within 300 feet of the subject property, which is evidenced by
the Affidavit of Mailing marked "Exhibit C," attached and incorporated by this reference;
and

WHEREAS the Council concluded the public hearing on July 28, 2008, and
heard and considered the testimony and evidence presented by the City staff and those
appearing at the public hearing; and

WHEREAS after the conclusion of the public hearing the Council vote resulted in
approval of the application by a vote of 5-0 with Councilors Boryska and Maddux
absent; and

WHEREAS based upon the evidence and testimony heard and considered by the
Council and especially the City staff reports dated June 9, 2008, and July 28, 2008, the
Council makes and adopts as its Findings of Fact the findings and analysis in the staff
reports attached as "Exhibit D," which are incorporated by this reference; and

Ordinance No. 1268-08

WHEREAS based upon the foregoing Findings of Fact, the City Council finds that it is in the best interest of the residents and inhabitants of the City and the public; the public interest will be served by adopting the amendment at this time; and the amendment conforms with the Tualatin Community Plan; and therefore, the Tualatin Development Code should be amended.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC 68.060 is amended to read as follows:

- (1) In determining whether or not a request for demolition of a landmark shall be approved, ~~or approved with conditions or denied~~, the ~~Planning Community Development~~ Director shall ~~make a decision that the landmark is~~ find that one of the criteria (a), (b), or (c) has been met. If the request meets none of the criteria, the Community Development Director shall deny the request.
 - (a) ~~No longer~~ The landmark is no longer historically or architecturally significant; and,
 - (b) The landmark is no longer architecturally significant.
 - ~~(b)~~(c) That the benefits of demolishing the landmark and the construction of the identified conflicting permitted uses(s) outweigh the value to the community of preserving the landmark.
- (2) The following factors shall be used by the ~~Planning Community Development~~ Director in making a decision on demolitions:
 - (a) The information used in the original designation of the landmark;
 - (b) Any evidence the applicant or property owner has provided demonstrating that there would be no reasonable, long-term economic benefit to the property owner from preservation of the landmark. In making this determination, the owner must show that all uses or adaptive uses of the landmark have been thoroughly examined. For example:
 - (i) The fact that a higher economic return would result from demolition than preservation on its own is insufficient to meet ~~this criterion~~ (b).
 - (ii) A lack of adequate funds to pursue potential uses or adaptive uses is insufficient to meet the criterion (i.e., selling, partially preserving, or moving the landmark is ~~are an options~~ that shall be considered).
 - (c) Whether issuance of a Certificate of Appropriateness approving the demolition request would act to the detriment of the public welfare;
 - (d) The Economic, Social, Environmental and Energy consequences to the community of demolishing the landmark as compared to pre-serving it; and
 - (e) The physical condition of the landmark.
 - (f) Whether the landmark is identified as a primary or secondary resource. Additional importance shall be accorded to preserving landmarks with a primary designation.

Section 2. A new subsection (10) is added to TDC 68.080 to read as follows:

- (10) In addition to any other persons entitled to notice, the Community Development Director or designee shall mail notice of application to demolish a landmark to the president of the Tualatin Historical Society. Such notice shall begin a comment period of two weeks.

INTRODUCED AND ADOPTED this 11th day of August, 2008.

CITY OF TUALATIN, OREGON

BY


Mayor

ATTEST:

BY


City Recorder

APPROVED AS TO LEGAL FORM


CITY ATTORNEY

Ordinance No. 1268-08



6605 SE Lake Road, Portland, OR 97222 • PO
Box 370 • Beaverton, OR 97075

Phone: 503-684-0360 Fax: 503-620-3433

Email:

legaladvertising@commnewspapers.com

AFFIDAVIT OF PUBLICATION

State of Oregon, County of Washington, SS

I, Charlotte Allsop, being the first duly sworn, depose and say that I am the Accounting Manager of *The Times* (serving Tigard, Tualatin & Sherwood), a newspaper of general circulation, published at Beaverton, in the aforesaid county and state, as defined by ORS 193.010 and 193.020, that

City of Tualatin
Notice of Public Hearing
TT11136

A copy of which is hereto annexed, was published in the entire issue of said newspaper for

1

Successive and consecutive weeks in the following issues
May 22, 2008

Charlotte Allsop

Charlotte Allsop (Accounting Manager)

Subscribed and sworn to before me this
May 22, 2008

Robin A. Burgess
NOTARY PUBLIC FOR OREGON
My commission expires

Acct #108462
Stacy Crawford
City of Tualatin
18880 SW Martinazzi Ave
Tualatin, OR 97062

Size 2 x 5.75
Amount Due \$104.08
*remit to address above

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., Monday, June 9, 2008, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider: PLAN TEXT AMENDMENT (PTA) 08-03—REQUEST TO AMEND THE HISTORIC LANDMARK DEMOLITION CRITERIA; AMENDING TDC SECTION 68.060(1) Before granting the proposed amendments, the City Council must find that: (1) Granting the amendments is in the public interest; (2) The public interest is best protected by granting the amendments at this time; (3) The proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan was considered; (6) The amendments are consistent with the Statewide Planning Goals; (7) The amendments are consistent with the Metro Urban Growth Management Functional Plan; and (8) The amendments are consistent with Level of Service F for the PM peak hour and E for the one-half hour before and after the PM peak hour for the Town Center 2040 Design Type and E/E for the rest of the 2040 Design Types in the City's planning area. Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings begin with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court. Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact Colin Cortes at (503) 691-3024. This meeting and any materials being considered can be made accessible upon request. CITY OF TUALATIN, OREGON. By: Sherilyn Lombos, City Recorder. Publish 5/22/2008. TT11136.

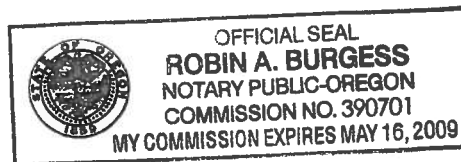


EXHIBIT A

AFFIDAVIT OF POSTING

STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

I, Stacy Crawford, being first duly sworn, depose and say:

That at the request of Sherilyn Lombos, City Recorder for the City of Tualatin, Oregon; that I posted two copies of the Notice of Hearing on the 22nd day of May, 2008, a copy of which Notice is attached hereto; and that I posted said copies in two public and conspicuous places within the City, to wit:


1. U.S. Post Office - Tualatin Branch
2. City of Tualatin City Center Building

Dated this 22nd day of May, 2008.



Stacy Crawford

Subscribed and sworn to before me this 2nd day of June, 2008.

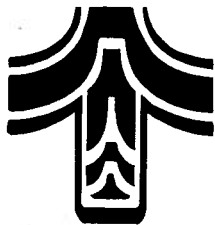


Notary Public for Oregon
My Commission expires: 2-5-11



RE: PLAN TEXT AMENDMENT (PTA) 08-03—REQUEST TO AMEND THE HISTORIC LANDMARK DEMOLITION CRITERIA; AMENDING TDC SECTION 68.060(1)

EXHIBIT B



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., Monday, June 9, 2008, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN TEXT AMENDMENT (PTA) 08-03—REQUEST TO AMEND THE HISTORIC LANDMARK DEMOLITION CRITERIA; AMENDING TDC SECTION 68.060(1)

Before granting the proposed amendments, the City Council must find that: (1) Granting the amendments is in the public interest; (2) The public interest is best protected by granting the amendments at this time; (3) The proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan was considered; (6) The amendments are consistent with the Statewide Planning Goals; (7) The amendments are consistent with the Metro Urban Growth Management Functional Plan; and (8) The amendments are consistent with Level of Service F for the PM peak hour and E for the one-half hour before and after the PM peak hour for the Town Center 2040 Design Type and E/E for the rest of the 2040 Design Types in the City's planning area.

Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings begin with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court.

Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact Colin Cortes at (503) 691-3024. This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

NOTICE TO THE TUALATIN TIMES: Please publish in the TUALATIN TIMES on
(May 22, 2008).

Mailed: 5/22/2008

AFFIDAVIT OF MAILING


STATE OF OREGON)
) SS
COUNTY OF WASHINGTON)

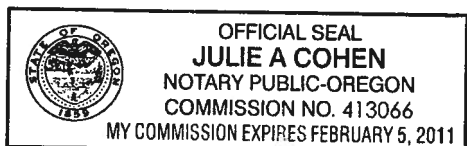
I, Stacy Crawford, being first duly sworn, depose and say:

That on the 22nd day of May, 2008, I served upon the persons shown on Exhibit "A," attached hereto and by this reference incorporated herein, a copy of a Notice of Hearing marked Exhibit "B," attached hereto and by this reference incorporated herein, by mailing to them a true and correct copy of the original hereof. I further certify that the addresses shown on said Exhibit "A" are their regular addresses as determined from the books and records of the Washington County and/or Clackamas County Departments of Assessment and Taxation Tax Rolls, and that said envelopes were placed in the United States Mail at Tualatin, Oregon, with postage fully prepared thereon.


Stacy Crawford

SUBSCRIBED AND SWORN to before me this 2nd day of June, 2008.


Notary Public for Oregon
My commission expires: 2-5-11



RE: PLAN TEXT AMENDMENT (PTA) 08-03—REQUEST TO AMEND THE
HISTORIC LANDMARK DEMOLITION CRITERIA; AMENDING TDC
SECTION 68.060(1)

EXHIBIT C

Exhibit "A"

2S126AB00102
DANNIELLE YATES
PO BOX 3307
TUALATIN, OR 97062

2S123D0003400
FLORA ALTHEA PRATT
PO BOX 236
TUALATIN, OR 97062

2S126CD05600
NOAH NWOKOMA
9385 SW ARIKARA DRIVE
TUALATIN, OR 97062

2S114CD011600
YONG HUI WOO
17700 SW SHASTA TRAIL
TUALATIN, OR 97062

2S125BC05401
TIMOTHY & BIBIANA MCHUGH
8430 SW AVERY STREET
TUALATIN, OR 97062

2S126AA00700
MATTHEW & TRACY WOODSIDE
9005 SW AVERY STREET
TUALATIN, OR 97062

2S123AA01500
LYNN & MARABEE BERTELSON/ MICHEAL &
LINDA GEHLEN/ RON FERGUSON
PO BOX 909
TUALATIN, OR 97062

2S123AA01601
GUY WHERITY
18400 SW 86TH AVENUE
TUALATIN, OR 97062

21E30B00600
GERALD SAGERT
23187 CORRAL GULCH ROAD
CANYON CITY, OR 97820

2S123BA02700
WINONA CEMETERY ASSN
8380 SW TONKA
TUALATIN, OR 97062

2S122C001500
TUALATIN YARDS LLC
19100 SW 51ST AVENUE
TUALATIN, OR 97062

2S124BC03001
ROBINSON CROSSING LLC
3380 BARRINGTON DRIVE
WEST LINN, OR 97068

ALLYSON ANDERSON
LEGACY MERIDIAN PARK HOSPITAL
19300 SW 65TH AVENUE
TUALATIN, OR 97062-7706

2S125BB00601
CELESTE ESTES
8385 SW AVERY STREET
TUALATIN, OR 97062

2S124CB00900
DAVID EMAMI
3380 BARRINGTON DRIVE
WEST LINN, OR 97068

2S115DC01100
EDWIN & TERESA HIRTE
11450 SW ELMER COURT
TUALATIN, OR 97062

21E19C01700
LEGACY HEALTH SYSTEM
1919 NW LOVEJOY STREET
PORTLAND, OR 97209

2S123DD01400
ASHLEY & REBECCA LUKAS
19840 SW BOONES FERRY RD
TUALATIN, OR 97062

LEGACY SYSTEM OFFICE
1919 NW LOVEJOY ST
PORTLAND, OR 97209-1503

2S123DD00500
TIGARD-TUALATIN SCHOOL
DISTRICT #23J
6960 SW SANDBURG STREET
TIGARD, OR 97223

2S124BC04700
WINON GRANGE 271
BY REO BACON SECRETARY
7735 SW NORSE HALL ROAD
TUALATIN, OR 97062

2S127B000700
LLOYD & HELEN KOCH
11340 SW TUALATIN-SHERWOOD ROAD
TUALATIN, OR 97062

2S127B000300
EDWARD WAGER
12075 SW TUALATIN-SHERWOOD ROAD
TUALATIN, OR 97062

2S123DD04200
KIMMER & ASSOC LLC
13044 SW BROADMOOR PL
PORTLAND, OR 97223

TUALATIN HISTORICAL
SOCIETY
P.O. BOX 1055
TUALATIN, OR 97062-1055

Yvonne Addington, Vice President
Tualatin Historical Society
P.O. Box 545
Sherwood, OR 97140-0545



City of Tualatin

www.ci.tualatin.or.us

NOTICE OF HEARING CITY OF TUALATIN, OREGON

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of Tualatin City Council at 7:00 p.m., Monday, June 9, 2008, at the Council Building, Tualatin City Center, at 18880 SW Martinazzi Avenue, to consider:

PLAN TEXT AMENDMENT (PTA) 08-03—REQUEST TO AMEND THE HISTORIC LANDMARK DEMOLITION CRITERIA; AMENDING TDC SECTION 68.060(1)

Before granting the proposed amendments, the City Council must find that: (1) Granting the amendments is in the public interest; (2) The public interest is best protected by granting the amendments at this time; (3) The proposed amendments are in conformity with the applicable objectives of the Tualatin Community Plan; (4) The factors listed in Section 1.032(4) were consciously considered; (5) The Tigard Tualatin School District Facility Plan was considered; (6) The amendments are consistent with the Statewide Planning Goals; (7) The amendments are consistent with the Metro Urban Growth Management Functional Plan; and (8) The amendments are consistent with Level of Service F for the PM peak hour and E for the one-half hour before and after the PM peak hour for the Town Center 2040 Design Type and E/E for the rest of the 2040 Design Types in the City's planning area.

Individuals wishing to comment may do so in writing to the Planning Division prior to the hearing and/or present written and/or verbal testimony to the City Council at the hearing. Hearings begin with a staff presentation, followed by testimony by proponents, testimony by opponents, and rebuttal. The time of individual testimony may be limited. If a participant requests, before the hearing is closed, the record shall remain open for at least 7 days after the hearing. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to the decision maker to respond to the issue precludes an action for damages in circuit court.

Copies of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at reasonable cost. For information contact Colin Cortes at (503) 691-3024. This meeting and any materials being considered can be made accessible upon request.

CITY OF TUALATIN, OREGON

By: Sherilyn Lombos
City Recorder

NOTICE TO THE TUALATIN TIMES: Please publish in the TUALATIN TIMES on
(May 22, 2008).

Mailed: 5/22/2008



Approved By Tualatin City Council

Date July 28, 2008

Recording Secretary J. Kirby

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Doug Rux, Community Development Director *DR*
Colin Cortes, Assistant Planner *C.C.*

DATE: July 28, 2008

SUBJECT: ORDINANCE AMENDING THE HISTORIC LANDMARK
DEMOLITION CRITERIA; AMENDING TDC SECTIONS 68.060(1)
AND (2) AND 68.080. (PTA-08-03)

ISSUE BEFORE THE CITY COUNCIL:

Whether the City Council should approve modifications to the demolition criteria for historic resources clarifying the criteria to be met by specifying that at least one of three criteria is to be met.

RECOMMENDATION:

The Tualatin Planning Advisory Committee (TPAC) voted 4-1 on 5/07/2008, recommending that the City Council approve PTA-08-03 and motioning that additional language be added to the proposed amendment as shown in Attachment A in green.

Staff recommends that the Council recommend that the City Council consider the staff report and attachments and direct staff to prepare an ordinance granting approval of PTA-08-03 based on the draft ordinance in Attachment D.

EXECUTIVE SUMMARY:

- The Council continued this amendment from the 6/09/2008 public hearing to allow further discussion among interested parties.
- This amendment is a legislative public hearing.
- The applicant is the Community Development Director.
- As presently codified, TDC Section 68.060 makes a decision regarding a landmark demolition request an administrative decision. An applicant is precluded from arguing that demolition of a landmark would be for greater public

EXHIBIT D

good without first demonstrating a landmark is either no longer historically or architecturally significant.

- The amendment requires an applicant to choose at least one of three criteria – lack of historical architectural significance, lack of architectural significance, or a greater public good – as the criterion to address to the satisfaction of the Community Development Director in order for him to approve a request. TDC 68.060(2) would continue to compel the Director to consider six major factors when evaluating an applicant's satisfaction of the criterion. (These are part of Attachment A.) Additionally, if an applicant selects only one of the criteria on which to base his application, the Community Development Director will use information in the resource files on the other criteria a part of his evaluation to develop a decision.
- The amendment also formalizes notification of the Tualatin Historical Society (THS) regarding an amendment to the historic preservation ordinance or a request to demolish a landmark.
- The interpretation of the demolition criteria adopted in 1993 was first questioned during City Council review of HIST-05-02, the 2005 application requesting demolition of the Robinson Store at 18810 SW Boones Ferry Road. (Review ended upon the applicant's withdrawal.) As of this writing, the City has never approved a landmark demolition request.
- The Council discussed amendment of the demolition criteria during its 1/14/2008 work session. The Council agreed to direct staff that TDC 68.060(1) be clarified and to revisit at a later date the general spirit and intent of the overall regulation of historic preservation.
- Review of the criteria in TDC 68.060(1) was part of the larger planning effort documented in the *Community Vision and Strategic Action Plan* of the Tualatin Tomorrow initiative, specifically efforts related to "Natural and Cultural History Preservation."
- The proposed text amendment language is provided in Attachment A. Background is included as Attachment B. The plan amendment approval criteria are addressed in the Analysis and Findings section of this report (Attachment C).
- TDC Section 68.040, last amended 4/22/2002, lists 26 historic landmarks. Of these, staff administratively removed one on 6/19/2002 and fire consumed one on 1/03/2008, leaving 24 listed and standing landmarks.
- On 4/15/2008, the Planning Division held an open house (neighborhood/developer meeting) for the owners of the historic landmarks inventoried in TDC Section 68.040.
- The applicable policies and regulations that apply to the proposal include: TDC 1.032 "Amendments," 16.030 "Historic Preservation," and 68.060 "Demolition Criteria." The Analysis and Findings section of this report (Attachment C) considers the applicable policies and regulations.

- Before granting the PTA-08-03, the City Council must find that it meets the criteria listed in TDC 1.032 and the objectives of 16.030. The Analysis and Findings section of this report (Attachment C) compares the application with the plan amendment criteria.
- Based on input from THS Vice President Yvonne Addington, TPAC member Paul Sivley suggested new language for Section 68.060(2)(b)(ii) as shown in Attachment C. The TPAC recommended approval of PTA-08-03 with this language included.
- THS President Norm Parker and Loyce Martinazzi met with the City Manager and the Community Development Director on 6/25/2008 to discuss new draft language. The draft language in Attachment A in blue satisfies their recommendation.

OUTCOMES OF DECISION:

Approval of the PTA request would result in the following:

1. An applicant satisfying at least one of three criteria to obtain approval to demolish a historic landmark listed in TDC Section 68.040.
2. The broadening of landmark demolition request potential review criteria.
3. Modification of the onerous criteria for demolition with the resulting possibility that additional resources could be designated at a future date knowing that this is a means to removing historic landmarks from Section 68.040 if desired.
4. Formal notification of THS regarding an amendment to the historic preservation ordinance or a request to demolish a landmark.

Denial of the PTA request would result in the following:

1. TDC Sections 68.060(1) and (2) and 68.080 remain as they are.
2. Questions of TDC interpretation of demolition criteria remain in doubt.
3. The City would not adequately address the concerns of THS.

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the TPAC recommendation for the Council are:

- Recommend the Council approve the proposed PTA with changes.
- Recommend the Council deny the request for the proposed PTA.
- Continue the discussion of the proposed PTA and return to the matter at a later date.

FINANCIAL IMPLICATIONS:

Because a City department is the applicant, an application fee is not applicable. Funds have been allocated in the FY 2008/09 budget to prepare City initiated amendments.

PUBLIC INVOLVEMENT:

The Planning Division held an open house for owners of historic landmarks and interested parties on 4/15/2008 and mailed notice of such to these parties. Two property owners attended representing the Luster House on SW Sagert Street and the Black House on SW Myslony Street. Two persons who were unable to attend, including a staff member of THS, contacted staff to inquire about the nature of amendment. The Community Development Director discussed the proposed language with THS President Norm Parker on 4/17/2008. At TPAC on 5/07/2008, THS Vice President Yvonne Addington requested that the historic preservation ordinance be strengthened such that it lessens the chance of demolition of the old Tualatin Elementary School at 19945 SW Boones Ferry Road. THS President Norm Parker and Loyce Martinazzi met with the City Manager and the Community Development Director on 6/25/2008 to discuss new draft language. The draft language in Attachment A in blue satisfies their recommendation.

- Attachments:**
- A. Proposed text amendment language
 - B. Background
 - C. Analysis and Findings
 - D. Draft ordinance
 - E. Landmark Inventory Map

ATTACHMENT A

PTA-08-03: PROPOSED TEXT AMENDMENT LANGUAGE

Section 68.060 Demolition Criteria.

- (1) In determining whether a request for demolition of a landmark shall be approved, approved with conditions or denied, the Planning-Community Development Director shall make a decision that the landmark is find that at least one of the criteria below has been met:
 - (a) ~~No longer~~The landmark is no longer historically or architecturally significant; and
 - (b) The landmark is no longer architecturally significant.
 - (c) The benefits of demolishing the landmark and the construction of the identified conflicting permitted uses(s) or uses outweigh the value to the community of preserving the landmark.
- (2) The following factors shall be used by the Planning-Community Development Director in making a decision on demolitions:
 - (a) The information used in the original designation of the landmark;
 - (b) Any evidence the applicant or property owner has provided demonstrating that there would be no reasonable, long-term economic benefit to the property owner from preservation of the landmark. In making this determination, the owner must show that all uses or adaptive uses of the landmark have been thoroughly examined. For example:
 - (i) The fact that a higher economic return would on its own result from demolition than preservation is insufficient to meet this criterion.
 - (ii) A lack of adequate funds to pursue potential uses or adaptive uses is insufficient to meet the criterion (i.e., selling, partially preserving, or moving the landmark isare an options that shall be considered).
 - (c) Whether issuance of a Certificate of Appropriateness approving the demolition request would act to the detriment of the public welfare;
 - (d) The Economic, Social, Environmental and Energy consequences to the community of demolishing the landmark as compared to pre-serving it; and
 - (e) The physical condition of the land-mark.
 - (f) Whether the landmark is identified as a primary or secondary resource. Additional importance shall be accorded to preserving landmarks with a primary designation.

Section 68.080 Demolition and Relocation Approval Process.

- (10) In addition to any other persons entitled to notice, the Community Development Director or designee shall mail notice of application to demolish a landmark to the president of the Tualatin Historical Society. Such notice shall begin a comment period of two weeks.

Notes:

1. *Staff recommends the language in red.*
2. *TPAC recommended the proposed language in green in 68.060(2) on May 7, 2008 as part of its motion.*
3. *On June 25, 2008 during a meeting with the City Manager and the Community Development Director, President Norm Parker and Loyce Martinazzi of the Tualatin Historical Society (THS) recommended that there be formal notification of the THS president regarding historic preservation. The proposed language in blue in Section 68.080 satisfies their recommendation.*

ATTACHMENT B

PTA-08-03: BACKGROUND

PTA-08-03 is a plan text amendment to Tualatin Development Code (TDC) Sections 68.060(1) and (2) and 68.080 regarding historic landmark demolition criteria.

In 2005, the City Council reviewed HIST-05-02, an application to demolish the Robinson Store at 18810 SW Boones Ferry Road that the applicant later withdrew. The review raised questions about how to interpret the demolition criteria in the TDC. The Council requested that staff revisit the criteria. On 1/14/2008, the Community Development Director presented slides related to clarification of the criteria as well as building maintenance standards, which were of interest to the Council. Historic preservation was among the Council's Strategic Action Plan Goals. The intent of the criteria as originally adopted in 1993 was that to be demolished a landmark needed to be found no longer either architecturally or historically significant, but not both. The Council directed staff to make this more explicit and to involve the Tualatin Historical Society (THS) when the Tualatin Planning Advisory Committee (TPAC) was to review the anticipated PTA. The Council at a later date would review the general spirit and intent of the regulation of historic preservation.

Prior to TPAC, the Community Development Director on 4/15/2008 held an open house for the owners of the historic landmarks listed in TDC Section 68.040 and THS.

On 6/09/2008, the Council continued this matter to the 7/28/2008 public hearing to allow further discussion among interested parties. Staff revised the application after a 6/25/2008 meeting with President Norm Parker and Loyce Martinazzi of THS so that it amends Section 68.080 to codify formal notification of THS of any demolition request. The proposed language of the text amendment is in Attachment A.

ATTACHMENT C

PTA-08-03: ANALYSIS AND FINDINGS

Tualatin Development Code (TDC) Section 1.032 lists the eight criteria for approval of a plan amendment.

Before granting an amendment to the Plan Text or Plan Map of the Tualatin Development Code (TDC), including the Tualatin Community Plan, the Council shall find that:

1. Granting the amendment is in the public interest.

PTA-08-03 furthers the public interest by clarifying a significant policy that establishes the parameters by which to review a request to demolish a historic landmark and also establishes formal notification of the Tualatin Historical Society (THS) regarding such a request.

2. The public interest is best protected by granting the amendment at this time.

Granting the amendment at this time best protects the public interest because it facilitates review by the City Council and because the City presently has no submitted requests to demolish a historic landmark. Additionally, THS has requested that it receive formal notification of a request to demolish a landmark. This process of notification helps protect the public interest by notifying an organization with the vested interest in historic preservation issues in the Tualatin community.

3. The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

Tualatin Development Code (TDC) Section 16.030 "Historic Preservation" – a part of the Tualatin Community Plan (TCP) – lists twenty-five (25) objectives of the historic preservation program. The applicable objectives are listed below:

(1) Promote the historic, educational, architectural, cultural, economic, and general welfare of the public through the identification, preservation, restoration, rehabilitation, protection and use of those buildings, structures, sites and objects of historic interest within the City;

While PTA-08-03 broadens slightly the criteria an applicant must meet to obtain approval of the demolition of a historic landmark, the criteria remain substantively similar to those in the existing ordinance. The amendment fulfills a City Council directive to clarify the criteria in order to facilitate the review of future requests. It also serves the Council's consideration of the overall spirit and intent of historic preservation and provides for formal notification of THS. The scope of the amendment is minor compared to that of the overall historic preservation ordinance, which would continue to

promote the historic, educational, architectural, cultural, economic, and general welfare of the public through the identification, preservation, restoration, rehabilitation, protection and use of those buildings, structures, sites and objects of historic interest within the city. The objective is met.

(2) Foster community and neighborhood pride and sense of identity based on recognition and use of historic resources;

The amendment seeks to clarify that portion of the historic preservation ordinance allowing for demolition and to broaden the options of landowners. It thereby facilitates review by the City Council of future demolition requests and allows the Council to balance this and other objectives. The TDC would continue to require an applicant to meet a set of criteria in order to obtain approval to demolish a historic landmark. The objective is met.

(3) Strengthen the economy of the City by encouraging property owners to preserve historic resources for tourists, visitors and residents;

The amendment provides greater latitude to landowners seeking to profit from historic landmarks and facilitates Council review of demolition requests by clarifying the parameters of review, thereby enabling the Council to balance multiple public objectives. The objective is met.

(4) Encourage public awareness, understanding and appreciation of the City's history and culture;

The amendment would leave intact the overall requirement of the ordinance, namely to allow demolition of a designated historic landmark only if an applicant presents sufficient reason. Requests will continue to involve public participation, and staff would formally notify THS of such requests. The objective is met.

(5) Promote the enjoyment and use of historic resources appropriate for the education and recreation of the people of Tualatin;

By broadening the options of owners of historic landmarks, the City and a future applicant can more readily reach consensus on a particular landmark by mitigating or accommodating conflicting uses such that the enjoyment of historic resources may continue. The objective is met.

(6) Identify and preserve diverse architectural styles reflecting periods of the City's historical and architectural development, encourage complementary design and construction for alterations affecting historic resources and encourage relocation of historic resources over demolition;

The amendment would not alter the encouragement to relocate rather than demolish historic resources. Additionally, the ordinance will continue to require applicants to rebut the City's accumulated research that led to the designation of the historic

landmarks listed in TDC Section 68.040 in fulfillment of a major state planning goal. The objective is met.

(7) Enhance property values and increase economic and financial benefits to the City and its inhabitants;

The amendment would broaden options for owners of historic landmarks such that they can more easily conserve landmarks while accommodating economic enterprise. The City benefits from the accommodation of enterprises and the conservation of landmarks. This amendment meets the objective.

(8) Identify and resolve conflicts between the preservation of historic resources and alternative land uses;

The amendment would ease review by the City Council of future demolition requests, particularly by allowing a fuller understanding of each criterion. In both the existing and proposed text of TDC Section 68.060(1), there remains the criterion "that the benefits of demolishing the landmark and the construction of the identified conflicting permitted use(s) outweigh the value to the community of preserving the landmark." This allows public scrutiny and Council review of the level of compliance of individual requests with Objective 8. Additionally, Subsection (2) lists factors that must be considered for any chosen criterion. Lastly, the amendment would codify formal notification of THS. The amendment would help to identify and resolve conflicts between the preservation of historic resources and alternative land uses by clarifying demolition review criteria.

(9) Integrate the management of historic resources into public and private land management and development processes;

The amendment would ease review by the City Council of future demolition requests and would not compromise this objective. The TDC would continue to require an applicant to meet a set of criteria in order to obtain approval to demolish a historic landmark.

(10) Carry out the provisions of Statewide Planning Goal 5;

Oregon Administrative Rules (OAR) 660-015-0000(5) elaborates Oregon Statewide Planning Goal 5 "Natural Resources, Scenic and Historic Areas, and Open Spaces." Goal 5 encourages local governments to evaluate historic resources and maintain current inventories of them; TDC Chapter 68, including the inventory that is Section 68.040, fulfills Goal 5. The proposed text amendment would not interfere with this statewide planning goal.

(11) Prepare a report describing the comprehensive history of the City's past; and

This objective was previously met in the form of the "City of Tualatin Historic Resource Technical Study and Inventory 1992/1993," available upon request for viewing in the Community Development Department, and so is no longer relevant.

(12) Identify and list additional properties to the current list of protected historic resources.

This amendment does not preclude future additions to the historic landmark inventory in TDC Section 68.040.

(13) Upon annexation, potential historic resources located outside of the City, but within the City's planning area shall proceed through the significance review, conflicting use and economic, social, environmental and energy analysis;

This amendment is not relevant to this objective because it is general to all historic properties and not related to any particular annexed property.

(14) Review the impacts on landmarks when public improvement projects are proposed;

In both the existing and proposed text of TDC Section 68.060(1), there remains the criterion "that the benefits of demolishing the landmark and the construction of the identified conflicting permitted use(s) outweigh the value to the community of preserving the landmark." This allows public scrutiny and Council review of a request raised by a public improvement project. Also, TDC 68.060(2) would continue to specify factors to consider when evaluating any chosen criterion.

(15) Retain landmarks in the Low Density Residential (RL) Planning District on parcels which cannot be partitioned or subdivided by preserving and not demolishing or relocating them;

This amendment is not relevant to this objective because it is general to all historic properties and not related to any particular property.

(16) Retain landmarks located on parcels which can be partitioned or subdivided in the Low Density Residential (RL) Planning District by property owners and developers integrating the resource into proposed lot configurations and development proposals;

This amendment is not relevant to this objective because it is general to all historic properties and not related to any particular property.

(20) Encourage adaptive reuse of landmarks in commercial planning districts and discourage relocation and demolition;

The amendment preserves the existence and substantive nature of the criteria established to dissuade property owners from requesting demolition of historic landmarks. The City Council will continue to review future requests for demolition against the criterion "that the benefits of demolishing the landmark and the construction of the identified conflicting permitted use(s) outweigh the value to the community of

preserving the landmark.”

4. The factors listed in Section 1.032(4) were consciously considered:

The various characteristics of the areas in the City;

TDC Section 68.040 as amended 4/22/2002 lists 26 historic landmarks throughout the City, of which the Richardson House was administratively removed from the list on 6/19/2002 upon the owner's request and the Nyberg House burned in January 2008. The plan text amendment would apply to these historic landmarks and others yet to be designated, and the amendment does not influence and is not influenced by any particular area(s) of the city.

The suitability of the areas for particular land uses and improvements in the areas;

The plan text amendment is legislative because it is not specific to any property. While properties having historic landmarks are finite in number, the amendment is not related to any specific landowner's development or redevelopment intentions. Because of this, the criterion is not applicable.

Trends in land improvement and development;

As the city develops and redevelops to accommodate its projected resident population, conflicting uses will continue to arise. As a consequence of the 2005 withdrawn request to demolish the Robinson Store in (HIST-05-02), this amendment seeks to clarify that portion of the historic preservation ordinance allowing for demolition and to broaden the options of landowners. The amendment serves to facilitate the future accommodations of conflicting uses and so meets the criterion.

Property values;

The plan text amendment is legislative because it is not specific to any property and will have no material detriment to any particular property, so the criterion is not applicable.

The needs of economic enterprises and the future development of the area;

As the city develops and redevelops to accommodate its projected resident population, conflicting uses will continue to arise as landowners seek to profit from land including through the accommodation of economic enterprises. As a consequence of the 2005 withdrawn request to demolish the Robinson Store in (HIST-05-02), this amendment seeks to clarify that portion of the historic preservation ordinance allowing for demolition and to broaden the options of landowners. The amendment serves to facilitate the future accommodations of conflicting uses and also facilitates the balancing of several public objectives. For example, the request to demolish the Robinson Store necessitated weighing the merits of preserving the landmark and those of widening a

public thoroughfare to improve transportation, and the former outweighed the latter. This amendment will facilitate deliberation on conflicting objectives during future demolition requests. The criterion is met.

Needed right-of-way and access for and to particular sites in the area;

Because the amendment is legislative it is not specific to any property, it does not affect any specific existing or future right-of-way (ROW) or other public access and so the criterion is not applicable.

Natural resources of the City and the protection and conservation of said resources;

Because the amendment is legislative and not specific to any property, it does not hinder specific natural resources within the city or the protection and conservation of any resources themselves. The criterion is not applicable.

Prospective requirements for the development of natural resources in the City;

Because the amendment is legislative and not specific to any property, it does not hinder prospective requirements for the development of natural resources within the city. The criterion is not applicable.

The public need for healthful, safe, aesthetic surroundings and conditions.

While the amendment itself does not affect the provision of healthful, safe, aesthetic surroundings and conditions, it will facilitate public deliberation that will balance City objectives including the provision of healthful, safe, aesthetic surroundings and conditions. The criterion is met.

Proof of change in a neighborhood or area, or a mistake in the Plan Text or Plan Map for the property under consideration are additional relevant factors to consider.

The City does not allege a mistake in the plan text or plan map, and the amendment is not specific to any particular property and so no change in a neighborhood or area is relevant. The criterion is not applicable.

5. The criteria in the Tigard-Tualatin School District Facility Plan for school facility capacity have been considered when evaluating applications for a comprehensive plan amendment or for a residential land use regulation amendment.

Because the amendment will not affect public school capacity, this criterion is not applicable.

6. Granting the amendment is consistent with the applicable State of Oregon Planning Goals and applicable Oregon Administrative Rules.

The PTA must comply with the plan amendment criteria in Section 1.032 of the TDC that incorporates the Tualatin Community Plan (TCP), which reflects Metro Code provisions and has been acknowledged by the Oregon Department of Land Conservation and Development (DLCD) as complying with state planning goals. Therefore, compliance with the TCP by definition includes compliance with state and regional minimum planning requirements, including Oregon Administrative Rules (OAR) 660-015 and 016 about historic resources. OAR 660-015-0000(5) elaborates Oregon Statewide Planning Goal 5 "Natural Resources, Scenic and Historic Areas, and Open Spaces." Goal 5 encourages local governments to evaluate historic resources and maintain current inventories of them; TDC Chapter 68, including Section 68.040, fulfills Goal 5. The proposed text amendment would not interfere with this statewide planning goal.

7. Granting the amendment is consistent with the Metropolitan Service District's Urban Growth Management Functional Plan.

This criterion is not applicable because the March 2008 edition of the Urban Growth Management Functional Plan (UGMFP) effective 4/25/2007, codified as Metro Code Section 3.07, makes no reference to historic preservation.

8. Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

This criterion is not applicable to any particular property or potential site development and maximum possible vehicle traffic during the p.m. peak hour.

ORDINANCE NO. _____

ORDINANCE AMENDING THE HISTORIC LANDMARK DEMOLITION
CRITERIA; AND AMENDING TDC 68.060 AND 68.080 (PTA-08-03)

WHEREAS Tualatin Development Code (TDC) 68.060 establishes criteria for the
for the demolition of a historic landmark; and

WHEREAS the staff recommends to Council that the TDC be amended to clarify
the criteria and formally involve the Tualatin Historical Society (THS); and

WHEREAS the Tualatin Planning Advisory Committee (TPAC) recommends to
Council that the TDC be amended to clarify and improve the criteria; and

WHEREAS Council finds the amendment to be appropriate. Therefore,

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC Section 68.060 is amended to read as follows:

- (1) In determining whether a request for demolition of a landmark shall be approved or approved with conditions, the Planning-Community Development Director shall ~~make a decision that the landmark is~~ find that one of the criteria below has been met:
 - (a) ~~No longer~~ The landmark is no longer historically or architecturally significant.
 - (b) The landmark is no longer architecturally significant.
 - (c) That the benefits of demolishing the landmark and the construction of the identified conflicting permitted uses ~~(s)~~ or uses outweigh the value to the community of preserving the landmark.
- (2) The following factors shall be used by the Planning-Community Development Director in making a decision on demolitions:
 - (a) The information used in the original designation of the landmark;
 - (b) Any evidence the applicant or property owner has provided demonstrating that there would be no reasonable, long-term economic benefit to the property owner from preservation of the landmark. In making this determination, the owner must show that all uses or adaptive uses of the landmark have been thoroughly examined. For example:
 - (i) The fact that a higher economic return on its own would result from demolition than preservation is insufficient to meet this criterion.
 - (ii) A lack of adequate funds to pursue potential uses or adaptive uses is insufficient to meet the criterion (i.e., selling, partially preserving, or moving the landmark ~~is~~ are an options that shall be considered).
 - (c) Whether issuance of a Certificate of Appropriateness approving the demolition request would act to the detriment of the public welfare;

Draft

- (d) The Economic, Social, Environmental and Energy consequences to the community of demolishing the landmark as compared to pre-serving it; and
- (e) The physical condition of the landmark.
- (f) Whether the landmark is identified as a primary or secondary resource. Additional importance shall be accorded to preserving landmarks with a primary designation.

Section 2. TDC Section 68.080 is amended to read as follows:

(10) In addition to any other persons entitled to notice, the Community Development Director or designee shall mail notice of application to demolish a landmark to the president of the Tualatin Historical Society. Such notice shall begin a comment period of two weeks.

INTRODUCED AND ADOPTED this 11th day of August, 2008.

CITY OF TUALATIN, OREGON

BY _____
Mayor

ATTEST:

BY _____
City Recorder

TOTALS





Approved By Tualatin City Council
Date June 9, 2008
Recording Secretary J. Kirby

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Doug Rux, Community Development Director *DR*
Colin Cortes, Assistant Planner *C.C.*

DATE: June 9, 2008

SUBJECT: ORDINANCE AMENDING THE HISTORIC LANDMARK
DEMOLITION CRITERIA; AMENDING TDC SECTION 68.060(1)
AND (2). (PTA-08-03)

ISSUE BEFORE THE CITY COUNCIL:

Whether the City Council should approve modifications to the demolition criteria for historic resources clarifying the criteria to be met and that one of three criteria is to be met.

RECOMMENDATION:

The Tualatin Planning Advisory Committee (TPAC) voted 4-1 on May 7, 2008, recommending that the City Council approve PTA-08-03 and motioning that additional language be added to the proposed amendment as shown in Attachment A.

Staff recommends that the Council recommend that the City Council consider the staff report and attachments and direct staff to prepare an ordinance granting approval of PTA-08-03 based on the draft ordinance in Attachment D.

EXECUTIVE SUMMARY:

- This matter is a legislative public hearing.
- The applicant is the Community Development Director.
- The interpretation of the demolition criteria adopted in 1993 was first questioned during City Council review of HIST-05-02, the 2005 application requesting demolition of the Robinson Store at 18810 SW Boones Ferry Road.
- The Council discussed amendment of the demolition criteria during its 1/14/2008 work session. The Council agreed to direct staff that TDC Section 68.060(1) be

clarified and to revisit the general spirit and intent of the historic preservation ordinance at a later date.

- Review of the criteria was part of the larger planning effort documented in the *Community Vision and Strategic Action Plan* of the Tualatin Tomorrow initiative, specifically efforts related to “Natural and Cultural History Preservation.”
- TDC Section 68.040, last amended 4/22/2002, lists 26 historic landmarks. Of these, staff administratively removed one on 6/19/2002 and fire consumed one on 1/03/2008, leaving 24 standing and listed landmarks.
- On 4/15/2008, the Planning Division held an open house (neighborhood/developer meeting) for the owners of the historic landmarks inventoried in TDC Section 68.040.
- The proposed text amendment language is provided in Attachment A. Background is included as Attachment B. The plan amendment approval criteria are addressed in the Analysis and Findings section of this report (Attachment C).
- The applicable policies and regulations that apply to the proposal include: TDC 1.032 “Amendments” and 68.060 “Demolition Criteria.” The Analysis and Findings section of this report (Attachment C) considers the applicable policies and regulations.
- Before granting the PTA-08-03, the City Council must find that it meets the criteria listed in TDC 1.032. The Analysis and Findings section of this report (Attachment C) compares the application with the plan amendment criteria.
- Based on input from the Tualatin Historical Society, TPAC member Paul Sivley suggested new language for Section 68.060(2)(b)(ii) as shown in Attachment C. The TPAC recommended approval of PTA-08-03 with this language included.

OUTCOMES OF DECISION:

Approval of the PTA request would result in the following:

1. Makes clear that an applicant must satisfy one of three criteria to obtain approval to demolish a historic landmark listed in TDC Section 68.040.
2. Broadens the criteria of obtaining approval to demolish a historic landmark.
3. Modifies the onerous criteria for demolition with the resulting possibility that additional resources could be designated at a future date knowing that this is a means to removing historic resources from Section 68.040 if desired.

Denial of the PTA request would result in the following:

1. TDC Section 68.060(1) “Demolition Criteria” remains as is.
2. Questions of Code interpretation of demolition criteria remain in doubt.

ALTERNATIVES TO RECOMMENDATION:

The alternatives to the staff recommendation for TPAC are:

- Recommend the Council approve the proposed PTA with alterations.

- Recommend the Council deny the request for the proposed PTA.
- Continue the discussion of the proposed PTA and return to the matter at a later date.

FINANCIAL IMPLICATIONS:

Because a City department is the applicant, an application fee is not applicable. Funds have been allocated in the FY 2007/08 budget to prepare City initiated amendments.

PUBLIC INVOLVEMENT:

The Planning Division held an open house for owners of historic landmarks and interested parties on 4/15/2008. Staff mailed notice of the open house to the aforementioned parties. Two property owners attended representing the Luster House on Sagert Street and the Black House on Myslony Street. As of this writing, two persons who were unable to attend, including a staff member of the Tualatin Historical Society, contacted staff to inquire about the nature of amendment. The Community Development Director discussed the proposed language with Norm Parker, president of the Tualatin Historical Society, on April 17, 2008. At TPAC on May 7, 2008, Yvonne Addington, Vice President of the Tualatin Historical Society, requested that the historic preservation ordinance be strengthened such that it lessens the chance of demolition of the old Tualatin Elementary School.

- Attachments:**
- A. Proposed text amendment language
 - B. Background
 - C. Analysis and Findings
 - D. Draft ordinance

ATTACHMENT A

PTA-08-03: PROPOSED TEXT AMENDMENT LANGUAGE

Section 68.060(1)

(1) In determining whether a request for demolition of a landmark shall be approved, approved with conditions or denied, the Planning Community Development Director shall ~~make a decision that the landmark is~~ find that one of the criteria below has been met:

- (a) ~~No longer~~ The landmark is no longer historically or architecturally significant; ~~and.~~
- (b) The landmark is no longer architecturally significant.
- (c) That the benefits of demolishing the landmark and the construction of the identified conflicting permitted uses(s) or uses outweigh the value to the community of preserving the landmark.

(2) The following factors shall be used by the Planning Community Development Director in making a decision on demolitions:

- (a) The information used in the original designation of the landmark;
- (b) Any evidence the applicant or property owner has provided demonstrating that there would be no reasonable, long-term economic benefit to the property owner from preservation of the landmark. In making this determination, the owner must show that all uses or adaptive uses of the landmark have been thoroughly examined. For example:
 - (i) The fact that a higher economic return would result from demolition than preservation is insufficient to meet this criterion.
 - (ii) A lack of adequate funds to pursue potential uses or adaptive uses is insufficient to meet the criterion (i.e., selling, partially preserving, or moving the landmark ~~is~~ are an options that shall be considered).
- (c) ...

TPAC recommended the proposed language in blue in subsection (2) on May 7, 2008 as part of its motion.

ATTACHMENT B

PTA-08-03: BACKGROUND

PTA-08-03 is a plan text amendment to Tualatin Development Code (TDC) Section 68.060(1) "Demolition Criteria" regarding historic landmarks.

In 2005, the City Council reviewed HIST-05-02, an application to demolish the Robinson Store at 18810 SW Boones Ferry Road. The review raised questions about how to interpret the demolition criteria in the TDC. The Council requested that staff revisit the criteria. On January 14, 2008, the Community Development Director presented slides related to clarification of the criteria as well as building maintenance standards, which were of interest to the Council. History preservation was among the Council's Strategic Action Plan Goals. The intent of the criteria as originally adopted in 1993 was that a landmark needed to be found no longer either architecturally or historically significant, but not both, to be demolished. The Council directed staff to make this more explicit and to involve the Tualatin Historical Society when the Tualatin Planning Advisory Committee (TPAC) was to review the plan text amendment. At a later date, the Council would review the general spirit and intent of TDC Chapter 68.

Prior to TPAC, the Community Development Director on April 15, 2008 held an open house for the owners of the historic landmarks listed in TDC Section 68.040 and the Tualatin Historical Society. The proposed language of the text amendment is Attachment A.

ATTACHMENT C

PTA-08-03: ANALYSIS AND FINDINGS

Tualatin Development Code (TDC) Section 1.032 lists the eight criteria for approval of a plan amendment.

Before granting an amendment to the Plan Text or Plan Map of the Tualatin Development Code (TDC), including the Tualatin Community Plan, the Council shall find that:

1. Granting the amendment is in the public interest.

PTA-08-03 furthers the public interest by clarifying a significant policy that establishes the parameters by which to review a request to demolish a historic landmark.

2. The public interest is best protected by granting the amendment at this time.

Granting the amendment at this time best protects the public interest because it facilitates review by the City Council and because the City presently has no submitted requests to demolish a historic landmark.

3. The proposed amendment is in conformity with the applicable objectives of the Tualatin Community Plan.

Tualatin Development Code (TDC) Section 16.030 "Historic Preservation" – a part of the Tualatin Community Plan (TCP) – lists twenty-five (25) objectives of the historic preservation program. The applicable objectives are listed below:

(1) Promote the historic, educational, architectural, cultural, economic, and general welfare of the public through the identification, preservation, restoration, rehabilitation, protection and use of those buildings, structures, sites and objects of historic interest within the City;

While PTA-08-03 broadens slightly the criteria an applicant must meet to obtain approval of the demolition of a historic landmark, the criteria remain substantively similar to those in the existing ordinance. The amendment fulfills a City Council directive to clarify the criteria in order to facilitate the review of future requests. It also serves the Council's consideration of the overall spirit and intent of historic preservation. The scope of the amendment is minor compared to that of the overall historic preservation ordinance, which would continue to promote the historic, educational, architectural, cultural, economic, and general welfare of the public through the identification, preservation, restoration, rehabilitation, protection and use of those buildings, structures, sites and objects of historic interest within the city. The objective is met.

(2) Foster community and neighborhood pride and sense of identity based on recognition and use of historic resources;

The amendment seeks to clarify that portion of the historic preservation ordinance allowing for demolition and to broaden the options of landowners. It thereby facilitates review by the City Council of future demolition requests and allows the Council to balance this and other objectives. The TDC would continue to require an applicant to meet a set of criteria in order to obtain approval to demolish a historic landmark. The objective is met.

(3) Strengthen the economy of the City by encouraging property owners to preserve historic resources for tourists, visitors and residents;

The amendment provides greater latitude to landowners seeking to profit from historic landmarks and facilitates Council review of demolition requests by clarifying the parameters of review, thereby enabling the Council to balance multiple public objectives. The objective is met.

(4) Encourage public awareness, understanding and appreciation of the City's history and culture;

The amendment would leave intact the overall requirement of the ordinance, namely to allow demolition of a designated historic landmark only if an applicant presents sufficient reason. Requests will continue to involve public participation. The objective is met.

(5) Promote the enjoyment and use of historic resources appropriate for the education and recreation of the people of Tualatin;

By broadening the options of owners of historic landmarks, the City and a future applicant can more readily reach consensus on a particular landmark by mitigating or accommodating conflicting uses such that the enjoyment of historic resources may continue. The objective is met.

(6) Identify and preserve diverse architectural styles reflecting periods of the City's historical and architectural development, encourage complementary design and construction for alterations affecting historic resources and encourage relocation of historic resources over demolition;

The amendment would not alter the encouragement to relocate rather than demolish historic resources. Additionally, the ordinance will continue to require applicants to rebut the City's accumulated research that led to the designation of the historic landmarks listed in TDC Section 68.040 in fulfillment of a major state planning goal. The objective is met.

(7) Enhance property values and increase economic and financial benefits to the City and its inhabitants;

The amendment would broaden options for owners of historic landmarks such that they can more easily conserve landmarks while accommodating economic enterprise. The City benefits from the accommodation of enterprises and the conservation of landmarks. This amendment meets the objective.

(8) Identify and resolve conflicts between the preservation of historic resources and alternative land uses;

The amendment would ease review by the City Council of future demolition requests, particularly by allowing a fuller understanding of each criterion. In both the existing and proposed text of TDC Section 68.060(1), there remains the criterion “that the benefits of demolishing the landmark and the construction of the identified conflicting permitted use(s) outweigh the value to the community of preserving the landmark.” This allows public scrutiny and Council review of the level of compliance of individual requests with Objective 8. The amendment would help to identify and resolve conflicts between the preservation of historic resources and alternative land uses by clarifying demolition review criteria.

(9) Integrate the management of historic resources into public and private land management and development processes;

The amendment would ease review by the City Council of future demolition requests and would not compromise this objective. The TDC would continue to require an applicant to meet a set of criteria in order to obtain approval to demolish a historic landmark.

(10) Carry out the provisions of Statewide Planning Goal 5;

OAR 660-015-0000(5) elaborates Oregon Statewide Planning Goal 5 “Natural Resources, Scenic and Historic Areas, and Open Spaces.” Goal 5 encourages local governments to evaluate historic resources and maintain current inventories of them; TDC Chapter 68, including the inventory that is Section 68.040, fulfills Goal 5. The proposed text amendment would not interfere with this statewide planning goal.

(11) Prepare a report describing the comprehensive history of the City's past; and

This objective was previously met and is no longer relevant.

(12) Identify and list additional properties to the current list of protected historic resources.

This amendment does not preclude future additions to the historic landmark inventory in TDC Section 68.040.

(13) Upon annexation, potential historic resources located outside of the City, but within the City's planning area shall proceed through the significance review,

conflicting use and economic, social, environmental and energy analysis;

This amendment is not relevant to this objective because it is general to all historic properties and not related to any particular annexed property.

(14) Review the impacts on landmarks when public improvement projects are proposed;

In both the existing and proposed text of TDC Section 68.060(1), there remains the criterion "that the benefits of demolishing the landmark and the construction of the identified conflicting permitted use(s) outweigh the value to the community of preserving the landmark." This allows public scrutiny and Council review of a request raised by a public improvement project.

(15) Retain landmarks in the Low Density Residential (RL) Planning District on parcels which cannot be partitioned or subdivided by preserving and not demolishing or relocating them;

This amendment is not relevant to this objective because it is general to all historic properties and not related to any particular property.

(16) Retain landmarks located on parcels which can be partitioned or subdivided in the Low Density Residential (RL) Planning District by property owners and developers integrating the resource into proposed lot configurations and development proposals;

This amendment is not relevant to this objective because it is general to all historic properties and not related to any particular property.

(20) Encourage adaptive reuse of landmarks in commercial planning districts and discourage relocation and demolition;

The amendment preserves the existence and substantive nature of the criteria established to dissuade property owners from requesting demolition of historic landmarks. The City Council will continue to review future requests for demolition against the criterion "that the benefits of demolishing the landmark and the construction of the identified conflicting permitted use(s) outweigh the value to the community of preserving the landmark."

4. The factors listed in Section 1.032(4) were consciously considered:

The various characteristics of the areas in the City;

TDC Section 68.040 as amended 4/22/2002 lists 26 historic landmarks throughout the City, of which the Richardson House was administratively removed from the list on 6/19/2002 and the Nyberg House burned in January 2008. The plan text amendment

would apply to these historic landmarks and others yet to be designated, and the amendment does not influence and is not influenced by any particular area(s) of the city.

The suitability of the areas for particular land uses and improvements in the areas;

The plan text amendment is legislative because it is not specific to any property. While properties having historic landmarks are finite in number, the amendment is not related to any specific landowner's development or redevelopment intentions. Because of this, the criterion is not applicable.

Trends in land improvement and development;

As the city develops and redevelops to accommodate its projected resident population, conflicting uses will continue to arise. As a consequence of the 2005 request to demolish the Robinson Store in (HIST-05-02), this amendment seeks to clarify that portion of the historic preservation ordinance allowing for demolition and to broaden the options of landowners. The amendment serves to facilitate the future accommodations of conflicting uses and so meets the criterion.

Property values;

The plan text amendment is legislative because it is not specific to any property and will have no material detriment to any particular property, so the criterion is not applicable.

The needs of economic enterprises and the future development of the area;

As the city develops and redevelops to accommodate its projected resident population, conflicting uses will continue to arise as landowners seek to profit from land including through the accommodation of economic enterprises. As a consequence of the 2005 request to demolish the Robinson Store in (HIST-05-02), this amendment seeks to clarify that portion of the historic preservation ordinance allowing for demolition and to broaden the options of landowners. The amendment serves to facilitate the future accommodations of conflicting uses and also facilitates the balancing of several public objectives. For example, the request to demolish the Robinson Store necessitated weighing the merits of preserving the landmark and those of widening a public thoroughfare to improve transportation, and the former outweighed the latter. This amendment will facilitate deliberation on conflicting objectives during future demolition requests. The criterion is met.

Needed right-of-way and access for and to particular sites in the area;

Because the amendment is legislative it is not specific to any property, it does not affect any specific existing or future right-of-way or other public access and so the criterion is not applicable.

about historic resources. OAR 660-015-0000(5) elaborates Oregon Statewide Planning Goal 5 "Natural Resources, Scenic and Historic Areas, and Open Spaces." Goal 5 encourages local governments to evaluate historic resources and maintain current inventories of them; TDC Chapter 68, including Section 68.040, fulfills Goal 5. The proposed text amendment would not interfere with this statewide planning goal.

7. Granting the amendment is consistent with the Metropolitan Service District's Urban Growth Management Functional Plan.

This criterion is not applicable because the March 2008 edition of the Urban Growth Management Functional Plan (UGMFP) effective 4/25/2007, codified as Metro Code Section 3.07, makes no reference to historic preservation.

8. Granting the amendment is consistent with Level of Service F for the p.m. peak hour and E for the one-half hour before and after the p.m. peak hour for the Town Center 2040 Design Type (TDC Map 9-4), and E/E for the rest of the 2040 Design Types in the City's planning area.

This criterion is not applicable.

Draft

ORDINANCE NO. _____

ORDINANCE AMENDING THE HISTORIC LANDMARK DEMOLITION
CRITERIA; AND AMENDING TDC 68.060 (PTA-08-03)

WHEREAS Tualatin Development Code (TDC) 68.060 establishes criteria for the
for the demolition of a historic landmark; and

WHEREAS the staff recommends to Council that the TDC be amended to clarify
the criteria; and

WHEREAS the Tualatin Planning Advisory Committee (TPAC) recommends to
Council that the TDC be amended to clarify and improve the criteria; and

WHEREAS Council finds the amendment to be appropriate. Therefore,

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TDC Section 68.060 is amended to read as follows:

- (1) In determining whether a request for demolition of a landmark shall be approved or approved with conditions, the Planning Community Development Director shall make a decision that the landmark is find that one of the criteria below has been met:
 - (a) ~~No longer~~ The landmark is no longer historically or architecturally significant.
 - (b) The landmark is no longer architecturally significant.
 - (c) That the benefits of demolishing the landmark and the construction of the identified conflicting permitted use(s) or uses outweigh the value to the community of preserving the landmark.
- (2) The following factors shall be used by the Planning Community Development Director in making a decision on demolitions:
 - (a) The information used in the original designation of the landmark;
 - (b) Any evidence the applicant or property owner has provided demonstrating that there would be no reasonable, long-term economic benefit to the property owner from preservation of the landmark. In making this determination, the owner must show that all uses or adaptive uses of the landmark have been thoroughly examined. For example:
 - (i) The fact that a higher economic return would result from demolition than preservation is insufficient to meet this criterion.
 - (ii) A lack of adequate funds to pursue potential uses or adaptive uses is insufficient to meet the criterion (i.e., selling, partially preserving, or moving the landmark ~~is are~~ an options that shall be considered).

INTRODUCED AND ADOPTED this 23rd day of June, 2008.

Attachment D
Draft Ordinance

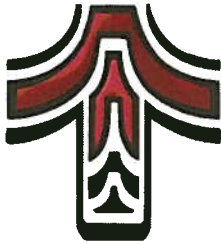
Draft

CITY OF TUALATIN, OREGON

BY _____
Mayor

ATTEST:

BY _____
City Recorder



Approved By Tualatin City Council
Date 8-11-08
Recording Secretary M. Grant

STAFF REPORT CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Donald A. Hudson, Finance Director *[Signature]*

DATE: August 11, 2008

SUBJECT: AN ORDINANCE RELATING TO WATER SERVICE; CHANGING DELINQUENT ACCOUNT PROVISIONS; AND AMENDING TMC 3-3-030, 3-3-140 AND 3-3-170.

ISSUE BEFORE THE COUNCIL:

Whether the City Council should amend the Tualatin Municipal Code (TMC) to allow for the delinquency notice charge to help cover costs related to door hanger reminders and make other minor changes to better reflect current operations for water service billing.

RECOMMENDATION:

Staff recommends approval of the attached ordinance.

EXECUTIVE SUMMARY:

Each month, the City of Tualatin sends out approximately 6,800 utility bills. Payments are due and payable within the first twenty (20) days of the month immediately following a billing period. If the charges are not paid on or before the 30th day of the month, the account becomes delinquent. Delinquent notices are mailed approximately a week after the bills become delinquent, with a due date of 10 days after the date of the mailer. After the 10 days have passed, Operations staff make a personal visit to each remaining delinquent account and leave a door hanger with notification that their water will be shut-off on a particular date (typically 5-7 days after the notice is left on or near the door) due to non-payment. TMC 3-3-170(3) spells out requirements that must be met on this notice. Currently, we average approximately 182 door hangers per month. Unlike most cities, we do not charge the customer for receiving a door hanger, even though it is a rather labor intensive process for the utility billing staff, as well as the Operations personnel that deliver and affix the notices each month.

The current language in the TMC allows for a delinquency notification charge when a customer is delinquent on three or more occasions within a fiscal year. We are

proposing a change to the ordinance to allow for a per-occurrence fee for a door hanger, rather than a delinquent fee after three delinquencies.

If payment is not made by the date listed on the door hanger, the City shuts off water to that premises. We currently average approximately 32 shut-offs each month. In order for water service to be re-instated, the customer must bring their account current and pay a \$10 reconnect fee. This fee, which has not changed in over 20 years, no longer covers the cost for staff time, including the time it takes for Operations staff to turn-off the water and return at a later time to turn it back on.

Staff has found that since there is no incentive to pay the utility bill on time (no late fee or door hanger fee), customers use the door hanger as a second reminder. A survey of neighboring cities and water districts found that most charge between \$5 and \$20 for door hangers or late fees and all of them charge a re-connect fee ranging from \$15 to \$50. After reviewing our costs and what other entities are charging, we are proposing a delinquency notice charge of \$10.00 when a customer receives a door hanger. We believe that instituting a door hanger fee will reduce the volume of hangers each month, while helping to cover the cost of those that remain on the list. We are also proposing to increase the service restoration fee from \$10.00 to \$30.00, to cover the staff time involved. If Council approves the Ordinance changes this evening, staff will return at the next meeting with the necessary changes to the water fee schedule.

While reviewing the municipal code, we found a few minor changes that should also be made. In TMC 3-3-030 (Application for Service), we propose to no longer require the Social Security Number (SSN) of an applicant, and change it to date of birth. Given the sensitivity to ID theft, people are reluctant to provide their SSN. Full name and date of birth, along with their driver's license number, provide us with some protection in locating them, if they leave town with a balance remaining on their account. We also propose to reduce the minimum number of days between the door hanger day and when we can shut-off water service from 5 days to 3 days. We are not proposing to change our current operation of shut-off day being approximately 7 days after the door hanger date, but would like the flexibility to monitor the issue of lack of urgency in paying the bill prior to service shut-off without coming back to Council for another ordinance change.

OUTCOMES OF DECISION:

This action will allow the City to better recoup the cost for door hangers and water service shut-offs.

FINANCIAL IMPLICATIONS:

These will be addressed when we return with the resolution at the next meeting.

Attachments: A. Ordinance

ORDINANCE NO. 1269-08

AN ORDINANCE RELATING TO WATER SERVICE; CHANGING
DELINQUENT ACCOUNT PROVISIONS; AND AMENDING TMC
3-3-030, 3-3-140 AND 3-3-170

WHEREAS the City incurs monthly costs due to delinquent water accounts and personnel, materials and services costs have increased over the years; and

WHEREAS other operational changes necessitate the need to amend the applicable language in the Tualatin Municipal Code (TMC).

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. TMC 3-3-030 is amended to read as follows:

(1) No water service will be provided without a signed application containing the following information:

- (a) The location of the premises to be served.
- (b) The date on which the applicant will be ready for service.
- (c) The ~~Social Security number~~ date of birth of the applicant.
- (d) The driver's license number of the applicant.
- (e) The address to which bills are to be mailed or delivered.
- (f) Whether the applicant is an owner or tenant of the premises.
- (g) An agreement to abide by all rules, regulations and ordinances of the City governing water service.

(h) Such other information as the City Manager may determine necessary for administration purposes.

(2) Two or more persons who join to make and submit a single application for service shall be jointly and severally liable for all applicable charges. Where the address of each person is indicated as the same, separate bills need not be sent.

(3) In addition to or in lieu of applications for service, the City Manager may require other forms of security prior to providing service.

(4) The City may terminate service, if service to the premises is turned on without first submitting an application and obtaining City approval. In addition to other remedies provided by this ordinance, before service is restored following termination pursuant to this section, the applicant shall pay double the applicable rate for the quantity of water consumed, as estimated by the City Manager.

(5) Where service to premises is provided, charges imposed and billed, and such charges have remained unpaid and the account has become delinquent, in addition to other remedies provided by this ordinance or other law, the City may require the following as a condition of providing future water service:

(a) ~~For leased premises where the tenant's account~~ When a tenant's account on leased premises has become delinquent and the tenant vacates the premises without ~~satisfying water service charges previously incurred~~ paying the account in full, ~~then before the premises are provided future water service, the owner (provided it is the same owner who previously leased~~

~~such premises when the water service account became delinquent) the property owner of such premises~~ shall satisfy the outstanding water service charges or submit a joint application with the future tenant before water service will be restored.

(b) The City may refuse to provide service to any premises where the person to whom service has been provided has failed to pay previously imposed water service charges until such unpaid charges are paid in full.

Section 2. TMC 3-3-14- is amended to read as follows:

(1) The City Council ~~hereby~~ adopts the following charge classifications, together with the purpose noted ~~hereafter~~. The City Council ~~hereby~~ adopts and may ~~hereafter~~ amend by resolution the attached charges, rates, and fees for the use of the City water supply system and for other materials and services provided by the City in connection with such system. For purposes of this ordinance and any resolutions establishing fees ~~hereunder~~ under this ordinance, the following fees and charges shall mean:

(a) Facility charge. Charges for the fixed and maintenance costs of having the water system available to provide water.

(b) Usage or consumption charge. ~~This~~ The charge ~~that~~ covers the volume of water delivered to the customer's premises.

(c) Service charge. A charge for meter reading, preparing the bill, accounting for the receipt of payment, maintaining customer records and responding to customer inquiries.

(d) Delinquency notification charge. In addition to accrued finance charges, any customer who has not been granted an extension of time for remittance of any fee imposed ~~herein~~ by this ordinance and who has failed to pay the fee on or before the date required for such payment ~~on three or more occasions within a fiscal year~~ shall pay a penalty, referred to as the "delinquency notification charge."

(e) Fire protection service charges. A charge for service, defined in TMC 3-3-020(2)Section 2.

(f) Hydrant and temporary water usage charges. Various fees relating to the temporary use of City equipment to enable water service to be temporarily obtained from a fire hydrant, including but not limited to the deposit for valves and wrenches, the permit fee and usage charges.

(g) Connection charges. Charges for direct connection to the City water system or for enlarging or adding to the service connection ~~which~~ that increases the potential flow into the customer's premises.

(h) In lieu of tax payment. Property which lies outside of the City limits ~~which~~ and receives water service shall pay an in lieu of tax payment, which represents an amount equivalent to what an owner of property within the City would otherwise pay for local improvements or for debt service on the water system capital improvement bonds.

(i) Service restoration charge. Where service has been discontinued either by removal or shut off of the valve, but not due to violation of ~~the provisions of Section 20(1) of this ordinance~~ TMC 3-3-200(1), a charge shall be imposed and collected for restoring service.

(j) Emergency or other shut-off charge or turn on. Where the service is removed, shut off or turned on depending on whether the request is fulfilled during or outside of normal City business hours, a shut off or turn on service charge shall be imposed and collected.

(k) Charge for processing non-sufficient funds (NSF) checks. ~~Where~~ When a check used to pay charges to the City is returned to the City by the bank or other financial institution from which it is drawn due to insufficient funds or the account is closed, a charge will be

imposed. The collection of this charge is in addition to and not in lieu of any criminal penalties ~~which that~~ may be available.

(l) Charge for restoring a meter that was removed by the City due to violation of ~~the provisions of Section 20(1) TMC 3-3-200 of this ordinance.~~

(m) Water Service Charge. A fee imposed and collected for water service, consumption and facilities, and where applicable, a fire protection system.

(2) Except as specifically provided in this ordinance or by resolution, all charges and service fees shall be due and payable within twenty (20) days of billing for provision of service.

(3) It shall be unlawful and a violation of this ordinance for any person to use or maintain connection to the City system without paying the appropriate charges and fees established in this Section or any resolution adopted pursuant hereto, or to fail to pay such fee or fees on time.

(4) Nothing ~~contained herein in this chapter~~ shall in any way limit the right of the City to bring a civil action for legal or equitable remedies or damages in connection with failure to pay, or late payment of any charge or fee established ~~herein in this ordinance~~ or the right of the City to terminate water service through the disconnection of the service line, or other appropriate means. The expense of such a disconnection or discontinuance, as well as the cost of restoring service, shall be a debt due the City and shall be recoverable in the same manner as other delinquent charges and fees.

(5) In addition to any other remedies provided by this ~~ordinance chapter~~ or by law, the City may refuse to issue any permit to any person who is delinquent in any payment due the City, and may discontinue service pursuant to ~~Section 20 TMC 3-3-200.~~

Section 3. TMC 3-3-170 is amended to read as follows:

(1) Water service charges are due and payable within the first twenty (20) days of a month immediately following a billing period. If such water service charges are not paid on or before the thirtieth day of a month immediately following a billing period, the account shall be delinquent and water service to the customer may be turned off in accordance with the procedure set forth in this section.

(2) Prior to the date scheduled for turnoff, the City shall notify the customer of the scheduled turnoff by written notice, which shall be affixed either on or near the door ~~as follows:~~

~~(a) Unless the front door of the premises is inaccessible, the City agent shall attempt to contact the occupant at such premises.~~

~~(b) If not adult person responds at the premises to the City agent's attempted contact, then a written notice shall be affixed either on or near the door.~~

(3) The notification provided to the customer under this section shall state the following:

(a) Water service will be terminated due to nonpayment of water service charges;

(b) Water service termination may be avoided by paying delinquent charges;

(c) If water service charges are disputed the customer may contact the City Finance Department at telephone number ~~692-2000~~; and

(d) A specific date and time when water service will be terminated

unless delinquent charges are first paid or unless the City Finance Department is notified that the water service charge is disputed. Such date shall be not less than ~~five (5)~~three (3) days from the date notification is provided.

(4) Except in the case of extreme hardship as determined by the City Manager, unless the delinquent water service charges are paid in full by the time and date indicated in the notification, or the City Finance Department is notified that the water service charge is disputed, the meter reader or City agent shall cause water service to be turned off no sooner than the date indicated in the notification. In cases of extreme hardship water service under a delinquent account may be restored where an acceptable schedule of installment payments for delinquent and current charges is arranged between the City and the customer.

(5) Except in cases of extreme hardship where an installment payment plan is arranged, pursuant to Subsection (4) of this section, whenever an account shall become delinquent ~~three or more times within one fiscal year~~, an additional delinquency notification charge shall be assessed and collected on the next following billing and any future billings ~~within said fiscal year~~ for which the account is delinquent to cover the additional administrative expense on such account.

(6) In addition to the accrued water service bill and any other charges which may be assessed, the customer responsible for the water bill shall pay the service restoration fee as established by the Council before water service is restored.

(7) Except as otherwise provided in Section 21, where the Finance Department is notified by a customer that such customer's water service charge is disputed, if water service has not yet been terminated, such termination shall be stayed until the disputed charges are examined and a determination is made. If the customer alleges that a problem with the meter exists, then the meter will be examined. If the water service charge is determined by the City to be correct, then the customer will be notified in writing of such finding and advised of the procedures available for appeal. If water service charges have been determined to be correct and the same as indicated in the delinquency notification, unless an appeal is filed in accordance with Section 21, or such charges are paid, water service shall be terminated on or after the eleventh day following the City's written notification of its finding.

INTRODUCED AND ADOPTED this 11th day of August, 2008.

CITY OF TUALATIN, OREGON

APPROVED AS TO LEGAL FORM



CITY ATTORNEY

BY


Mayor

ATTEST:

BY


City Recorder